other, set out below, to constitute the record in said cause on appeal:

1. Præcipe for Transcript.
2. Judgment (filed May —, 1936);
3. Order of Court approving Findings of Fact and Conclusions of Law;
4. Petition for appeal with order from that part of order overruling jurisdictional motion filed by the State and State Court receivers (to District Court);
5. Petition for appeal with order allowing same from that part of Court order overruling motion of State to confiscate oil (District Court);
6. Bond on Appeal;

[fol. 3] 7. Assignment of Errors;

8. Notice of appeal and waiver of citation on appeal;
9. Bill of Exceptions;
10. Petition for Appeal (to the United States Circuit Court of Appeals).

These directions and instructions filed on behalf of the State of Texas and J. C. Clopton and Bullock Hyder, petitioners and appellants, for making up transcript of the record, together with waiver of service of a copy of the same on David Donoghue, Trustee in Bankruptcy, for whom said judgment was entered.

William McCraw, Attorney General of Texas; W. J. Holt, Joe Sharp, C. M. Kennedy, William C. Davis, Assistants Attorney General, Attorneys for the State of Texas.

Service of a copy of the foregoing directions to the Clerk for making up transcript of the record on appeal in the foregoing case in Proceedings for Corporate Reorganization under Section 77b, acknowledged this the 25th day of June, 1936, and all other notice and service with reference thereto is hereby waived; the Clerk to proceed forthwith in making up said transcript in accordance with said directions and request.

W. B. Harrell, Attorney for David Donoghue, Trustee in Bankruptcy.

[fol. 4] IN UNITED STATES DISTRICT COURT

ORDER FOR TRUSTEE TO TURN OVER TO STATE RECEIVERS POSSESSION OF 69,900 BARRELS MORE OR LESS OF OIL—Filed June 5, 1936

On the 30th day of March, 1936, came on for hearing the amended motion of the State of Texas, acting by and through William McCraw, its Attorney General, for permission to proceed in confiscation proceeding against 69,900 barrels, more or less, of weathered and/or topped crude oil in an earthen pit in Upshur County, Texas, and the following oil in Gregg County, Texas: About 5,000 barrels, more or less, in steel storage tank No. 5 on the Phillips lease, and about 10,000 barrels, more or less, of fuel oil in tank No. 10 on the Callum lease, and approximately 25,000 barrels, more or less, of oil in tank No. 25 on the Callum lease, and about 37,500 barrels, more or less, of fuel oil in tank No. 37 on the Hanbury lease; and after hearing evidence and argument thereon, the Court finds that Trinity Refining Company, Debtor herein, has no interest in the 69,900 barrels, more or less, of weathered and/or topped crude in the earthen pit in Upshur County, Texas, and that Trinity Refining Company, Debtor herein, does own the oil in steel storage in Gregg County, Texas.

It is, Therefore, Ordered that David Donoghue, Trustee herein, release his possession to J. C. Clopton and Bullock Hyder, Receivers, of 69,900 barrels, more or less, of weathered and/or topped crude of a gravity of approximately 24 gravity and being situated in what is known as the Farris earthen pit in the Augustine Survey in Upshur County, Texas, and being the exact, same and similar oil [fol. 5] described and mentioned in a judgment rendered in Cause No. 9217-C, styled A. C. Wiley vs. East Texas Oil & Refining Company in the Special District Court of Gregg County, Texas, and being the same oil described in the plea of intervention filed by A. C. Wiley in Cause No. 56252, styled The State of Texas vs. V. E. Jackson, et al. in the 126th Judicial District Court of Travis County, Texas, and being the same oil that was described in a judgment rendered in cause No. 56252 styled The State of Texas vs. V. E. Jackson, et al., in the 126th Judicial District Court of Travis County, Texas, on the motion of A. C. Wiley to

vacate the receivership therein as to the oil therein described; and

It is Further Ordered that the said David Donoghue, Trustee, have and exercise no further possession, control or management over said 69,900 barrels, more or less, of oil contained in the earthen pit above described; and

It is Further Ordered that David Donoghue, Trustee, retain possession, control and management of the oil located in Gregg County, Texas, described as approximately 5,000, more or less, barrels of oil in steel storage tank No. 5 on the Phillips lease, Block 77, M. Dillard Survey, and approximately 10,000 barrels, more or less, of fuel oil in tank No. 10 on the Callum lease in the Rhodes Survey, and approximately 25,000 barrels more or less, of oil in tank No. 25 on the Callum lease in the Rhodes Survey, and also about 37,500 barrels, more or less, of fuel oil located in tank No. 37 on the Hanbury lease in the Hokit Survey, subject to the further orders of this Court.

Dated and entered this the 30th day of May, 1936.

James C. Wilson, United States District Judge.

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[fol. 6] IN UNITED STATES DISTRICT COURT

PETITION OF THE STATE OF TEXAS TO ALLOW APPEAL AND PETITION FOR SUPERSEDEAS, JOINED BY J. C. CLOPTON AND BULLOCK HYDER, RECEIVERS—Filed June 27, 1936

To the Honorable James C. Wilson, Judge of Said Court:

The State of Texas, acting by and through William McCraw, the duly elected, qualified and acting Attorney General of the State of Texas, and C. C. Clopton and Bullock Hyder, Receivers appointed by the District Court in and for the 126th Judicial District of Travis County, Texas, in cause No. —, styled State of Texas v. V. E. Jackson, et al., and being movants in a certain motion heretofore filed in this cause, seeking the return of certain properties of Trinity Refining Company, debtor, in this proceeding, and which said properties were summarily taken from these Receivers by David Donoghue, Trustee, appointed by this Court pursuant to the petition for corporate reorganization filed in this cause by Trinity Refining Company, considering itself and themselves aggrieved by the judgment

made herein on the — day of —— in the above entitled cause, wherein this Court overruled and denied a motion of the State of Texas and the Receivers above named, whereby it was sought by the State of Texas and said Receivers to have the property held by them pursuant to orders of the State Court in and for the 126th Judicial District of Texas, and which said properties were summarily taken from them by David Donoghue, Trustee, appointed and acting under orders of this Court, in the above entitled cause, and do hereby appeal from such order to the United States Circuit Court of Appeals for the Fifth Circuit, for [fol. 7] the reasons specified in the Assignment of Errors, which is filed herewith, and it and they pray that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit, and that this appeal may operate as a supersedeas of said judgment.

William McCraw, Attorney General of Texas; Joe Sharp, Assistant Attorney General; C. M. Kennedy, Assistant Attorney General; William C. Davis, Assistant Attorney General; W. J. Holt, Assistant Attorney General, Attorneys for the State of Texas, and Receivers.

The foregoing claim of appeal is allowed, and said petition for supersedeas is granted.

Done at the City of Fort Worth, Texas, June 26/36.

James C. Wilson, United States District Judge.

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IN UNITED STATES DISTRICT COURT

PETITION OF THE STATE OF TEXAS TO ALLOW APPEAL AND PETITION FOR SUPERSEDEAS—Filed June 27, 1936

To the Honorable James C. Wilson, Judge of said Court:

The State of Texas, acting by and through William McCraw, the duly elected, qualified and acting Attorney Gen- [fol. 8] eral of the State of Texas, considered itself aggrieved by the judgment made herein on the 30 day of May, A. D. 1936, in the above entitled cause, whereby the

motion of the State of Texas, praying for the right and privilege to institute confiscation proceedings in a Court of competent jurisdiction in Travis County, Texas, to confiscate the crude petroleum oil and the crude petroleum oil products set out in said motion, and to make Trinity Refining Company, debtor, and David Donoghue, Trustee in said cause, parties to said proceeding in said Court in Travis County, Texas, does hereby appeal from such order to the United States Circuit Court of Appeals for the Fifth Circuit, for the reasons specified in the Assignment of Errors filed herewith, and prays that this appeal may be allowed, and a transcript of the record, proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit, and that this appeal may operate as a supersedeas of said judgment as prayed for in the motion filed in this cause, seeking a supersedeas of said judgment.

William McCraw, Attorney General of Texas. Joe Sharp, Assistant Attorney General. C. M. Kennedy, Assistant Attorney General. William C. Davis, Assistant Attorney General. W. J. Holt, Assistant Attorney General.

The foregoing claim of appeal is allowed, and said petition for supersedeas is granted, and the crude petroleum oil and crude petroleum oil products set out in the motion of the State of Texas is not to be moved during the pendency of the appeal hereinabove allowed.

[fols. 9-10] Done at the City of Fort Worth, State of Texas, June 26/36.

James C. Wilson, United States District Judge.

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Supersedeas bond on appeal for $1,000.00, approved and filed June 27, 1936, omitted in printing.

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[fol. 11] In United States District Court

Assignment of Errors—Filed June 27, 1936

To the Said Honorable Court:

Come now the State of Texas, William McCraw, Attorney General of Texas, W. J. Holt and William C. Davis,

Assistants Attorney General, and J. C. Clopton and Bullock Hyder, Receivers appointed by the 126th District Court of Travis County, Texas, petitioners and appellants in said cause, and file this, their Assignment of Errors, complaining as follows:

I

That the District Court in making said order (which is sought to be corrected upon appeal) committed an error of law in holding substantially that the motion filed by the State of Texas and J. C. Clopton and Bullock Hyder, Receivers, asking the United States District Court to entertain their motion and enter its order dissolving the injunctions theretofore issued out of said Court against said Receivers from interfering with the possession of the properties of Trinity Refining Company, Debtor by David Donoghue, Trustee, appointed by the United States District Court under Section 77-b of the Bankruptcy Act, and to direct the said David Donoghue, Trustee, to turn over to said Receivers the properties and estates of Trinity Refining Company, Debtor, should be overruled and dismissed. Said Court in entering its order recited that the matters and things presented in the motion filed by the Receivers on the 30th day of March, 1936, were substantially the same as those presented to the Court in said proceeding by the State of Texas and the Receivers on the 14th day of January, 1936, and that the motion so presented [fol. 12] on the 14th day of January, 1936, had been overruled and denied.

The motion of the State and the Receivers filed in the proceeding in corporate reorganization on the 30th day of March, 1936, (the same was duly authorized by order of the State District Court which had appointed them whereas the original jurisdictional motion filed by the State and the Receivers on the 14th day of January, 1936, was not authorized by any order or direction of the State Court) asserted, as did the original motion, that the Bankruptcy Court sitting in proceedings for corporate reorganization under Section 77-b of the Act of Congress amendatory to the Bankruptcy Act of 1898 (Sec. 207, Title 11, U. S. C. A.) had no jurisdiction to enter its summary order directing David Donoghue, Trustee in Bankruptcy under 77-b, to take over all of the properties of the Debtor, Trinity Re-

fining Company, a corporation, from J. C. Clopton and Bullock Hyder, Receivers appointed by the District Court, 126th Judicial District, Travis County, Texas, in certain suits brought by the State of Texas to recover from the Debtor certain taxes, fines and penalties, and for the foreclosure of statutory liens not invalidated by bankruptcy. Such summary order was entered by the United States District Court directing the Trustee in Bankruptcy summarily to take over from the State Court Receivers the property of Trinity Refining Company, a corporation, Debtor, notwithstanding the suits of the State of Texas seeking to recover certain taxes, fines and penalties were filed prior to the filing in the United States District Court of the petition for corporate reorganization under Section 77-b by Trinity Refining Company, Debtor, and notwithstanding the State Court had considered such suits and had taken jurisdiction thereof, seeking the collection of such taxes, fines and penalties and the foreclosure of statutory liens [fol. 13] not invalidated by bankruptcy, and notwithstanding the appointment by the State Court of receivers in aid of foreclosure, with direction and authority to take into their custody all of the property of Trinity Refining Company, and to hold the same in aid of the foreclosure of said liens.

II

That said Court in making said order committed an error of law when it denied the State of Texas, through its duly elected, qualified and acting Attorney General, permission (which permission was sought subject to the pleas to the jurisdiction of the Bankruptcy Court) to bring confiscation suits in the State Courts of competent jurisdiction in Travis County, Texas, and refusing to grant the State authority to make David Donoghue, Trinity Refining Company, Debtor in corporate reorganization proceedings under Section 77-b, pending in the United States District Court, Northern District of Texas, parties defendant in said confiscation suits.

That said order of the District Court is erroneous and said Court in making said order committed errors of law in that said order is wholly unsupported by and contrary to the law.

Reliance for the prosecution of this appeal is placed on the foregoing assignment of errors.

Wherefore, the State of Texas, William McCraw, Attorney General of Texas, W. J. Holt and William C. Davis, Assistants Attorney General, and J. C. Clopton and Bullock Hyder, Receivers appointed by the 126th District Court of Travis County, Texas, petitioners and appellants, [fol. 14] pray that the judgment in said cause for the errors aforesaid be reversed, by the United States Circuit Court of Appeals for the Fifth Circuit, and that they be granted the relief to which they are entitled under this record.

William McCraw, Attorney General of Texas; W. J. Holt, C. M. Kennedy, Joe Sharp, William C. Davis, Assistants Attorney General, Attorneys for the State of Texas.

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IN UNITED STATES DISTRICT COURT

**Bill of Exceptions**—Filed June 27, 1936, at 12 o clock Noon

[Title omitted]

Appearances:

W. J. Holt, C. M. Kennedy, Joe Sharp and William C. Davis, appearing in behalf of the State of Texas;

Ben Greenwood, appearing for J. C. Clopton and Bullock Hyder, State Court Receivers;

W. B. Harrel, appearing for David Donoghue, Trustee in Bankruptcy.

Be it remembered that on the 30th day of March, 1936, the above entitled proceedings came on for hearing and consideration before the Honorable James C. Wilson, United States District Judge, sitting in Proceedings for Corporate Reorganization under Section 77b of the Bankruptcy Act, and said Court, after considering the motions filed by the State of Texas, the nature of which appears more fully in this Bill of Exceptions, having been heard [fol. 15] and considered by the Court and taken under advisement on the — day of May, A. D. 1936, filed in said Court its judgment denying said motions, to which action of the Court the State of Texas and the receivers duly took exception, which said exception was allowed by the Court.

In taking submission of said motions above mentioned, the following matters were considered by the Court:

IN UNITED STATES DISTRICT COURT

PETITION FOR REORGANIZATION

[Title omitted]

To the Honorable Judge of Said Court:

Comes now your petitioner, Trinity Refining Company, hereinafter referred to as Debtor, and respectfully represents:

1

The Debtor is a private corporation, organized and existing under and by virtue of the laws of the State of Texas, and now and during the six months preceding the filing of this petition having its principal office and place of business as fixed by its charter in Fort Worth, Tarrant County, Texas, in the Fort Worth Division of the Northern District of Texas.

2

The capital stock of the Debtor consists of 500 shares of the par value of $100.00 per share or $50,000.00, and 5,000 shares of non-par stock or $25,000.00, totaling $75,000.00. All of said stock is fully paid up. All of the 5,000 shares of non-par stock is issued to J. B. Sowell and 498 shares of the par stock is issued to the said J. B. Sowell; one share of the par stock is issued to T. W. Sowell and one share [fol. 16] is issued to L. A. Rankin; that the said J. B. Sowell, T. W. Sowell and L. A. Rankin are all of the stockholders of the Debtor. That the Debtor's franchise taxes have been fully paid for the year ending May 1, 1936.

3

The principal assets of the Debtor consist of a complete petroleum refinery for the manufacture of gasoline and other products of crude petroleum. That said refinery consists of a complete cracking unit, with two 250-horse power boilers, and one 100-horse power boiler, a pre-heater tube still, a cracking still, fractionating towers, clay towers, pumps, a gasoline recovery plant, a treating plant, about

100,000 barrels of steel storage tankage, and such other apparatus as is necessary and incidental to a modern petroleum refinery together with a two-story office building. Said refinery is located on about five acres of land belonging to the Debtor on the Gladewater-Tyler highway in the town of Gladewater, Gregg County, Texas. The office building is located on adjacent leased ground.

A seven-eighths oil and gas lease covering 40 acres of land in Jones County, Texas.

The Debtor would show that its said refinery is capable of refining and cracking approximately 1,500 barrels of crude oil per day and daily manufacturing therefrom approximately 2500 barrels of gasoline, 400 barrels of kerosene, 670 barrels of distillate and 450 barrels of fuel oil. The said refinery is modern and the material in the same is of the most approved construction; said refinery is practically new, almost all of it having been bought and assembled during the years 1934 and 1935 and at a cost in excess of $250,000.00.

[fol. 17] 4

The present financial condition of the Debtor, as evidenced by a statement of its assets, liabilities and capital stock, as of December 1, 1935, is as follows:

Assets.

| | | |
|---|---|---|
| Current Assets— | | |
| Tyler State Bank & Trust Co. | | $19,206.16 |
| Petty cash | | 119.35 |
| Deposit—State gasoline bond | | 1,000.00 |
| Advance payments—Confiscation | | 8,061.92 |
| Advance deposits | | 775.00 |
| Everett Banking Co. | | 7.63 |
| Notes receivable | | 1,181.25 |
| Accounts receivable | | 31,289.39 |
| Total | | 61,634.70 |
| Inventories— | | |
| Refined products—inventory | $15,613.25 | |
| Crude oil, inventory | 361.01 | |
| Total | | $15,974.26 |
| Total current assets | | 77,608.96 |

| | | |
|---|---|---|
| Fixed Assets— | | |
| Jones County Lease | $10,000.00 | |
| Warehouse stock | 3,986.66 | |
| Plant & equipment | 92,550.67 | |
| Plant & equipment—#3 unit | 44,127.12 | |
| Plant & equipment—#4 unit | 82,440.11 | |
| Recovery plant Inv. | 8,233.04 | |
| Treating plant Inv. | 3,495.89 | |
| Buildings—investment | 13,302.78 | |
| [fol. 18] Filling station inv. | 51.73 | |
| Office furniture and fixtures | 6,575.44 | |
| Real estate | 2,250.00 | |
| Total Fixed Assets | | $267,013.44 |
| Total Assets | | $344,622.40 |

Liabilities

| | | |
|---|---|---|
| Current Liabilities— | | |
| Tax Lien Account: | | |
| State of Texas | | $69,334.04 |
| United States | | 50,676.74 |
| Materialman's lien accounts | | 37,996.14 |
| Contract lien accounts | | 10,731.79 |
| Common creditors accounts | | 28,999.61 |
| Accrued pay roll (Nov. 30, 1935) | | 2,856.64 |
| Total Current Liabilities | | $200,594.96 |
| Net Worth— | | |
| Capital stock (par) | $50,000.00 | |
| Capital stock (non-par) | 25,000.00 | |
| Total | $75,000.00 | |
| Surplus | $69,027.44 | |
| Total Net Worth | | 144,027.44 |
| Total Liabilities & Net Worth | | $344,622.40 |

That during the past year and a half and while said Debtor and its refinery were under the control and supervision of its present stockholders, said refinery has been operating at a profit. That during the six months period [fol. 19] ending October 30, 1935, the said refinery has

been operated at an average net monthly earning of $18,293.00. That the exact figures for said six months period are as follows:

| Month | Earnings | Deficit |
|---|---|---|
| May | $36,954.87 | |
| June | 35,072.52 | |
| July | 23,748.46 | |
| August | 17,312.86 | |
| September | 2,514.18 | |
| October* | | $5,839.47 |
| Total | $115,602.89 | $5,839.47 |
| To balance | | 109,763.42 |
| | $115,602.89 | $115,602.89 |
| Total earnings for period | $109,763.42 | 115,602.89 |
| Average earnings per month for period | 18,293.90 | |

* NOTE.—Loss shown this month account adjustment of taxes for entire year,

The Debtor has certain raw materials on hand and certain products, as reflected by the above statement. Sufficient raw materials can be obtained for the operation of the refinery, and under present prices and markets, the operation of the properties of the Debtor under experienced business management should net between fifteen and twenty thousand dollars per month.

5

During the last year and a half said refinery has been operated, for the convenience of the Debtor, by V. E. Jack- [fol. 20] son, an employee of the Debtor under the name of "Lone Star Refining Company." Debtor would show that neither V. E. Jackson nor the trade name of Lone Star Refining Company have owned or now own any stock of the Debtor or any of its properties, but that all of the operations of said refinery and all of the profits made by it and all of the properties belonging to said refinery and all contracts and agreements made in the name of "Lone Star Refining Company" or V. E. Jackson, trading as Lone Star

Refining Company, and all the debts and liabilities incurred by said "Lone Star Refining Company" or V. E. Jackson, trading as Lone Star Refining Company, were and are in truth and in fact operations, properties, profits, contracts, debts and liabilities of the debtor.

6

The Debtor is not insolvent but is unable to meet its debts as they mature, and it desires to effect a plan of reorganization, as provided in Section 77-B of the Act of Congress, Amendatory to the Bankruptcy Act of 1898 (Section 207, Title 11, U. S. C. A.)

7

That on the 12th day of October, 1935, the State of Texas brought suit against the Trinity Refining Company, the Debtor and against T. W. Sowell and against J. B. Sowell and against V. E. Jackson, who it alleged did business as Lone Star Refining Company, and against certain others not here necessary to mention, in which suit it sought and seeks to collect penalties against the individual defendants in the sum of $791,000.00 for alleged violations of the statutes of Texas with reference to the production, transportation, handling, sale, etc., of petroleum and its products, and the rules and regulations of the Railroad Commission of Texas promulgated under such statutes, all of such viola- [fol. 21] tions alleged to have been committed by certain named individual defendants in producing oil from three wells (which wells were not owned by the Debtor, and in handling and transporting such oil and in processing and selling said oil and its products and in failing to make certain reports as by said statutes and rules required, and in such suit asked for an injunction to restrain said defendants from further violating such statutes and rules and from disposing of or incumbering any of their assets, and asked for the appointment of a receiver of the properties of the Debtor and of other properties not belonging to the Debtor. Said suit is now pending in the 126th Judicial District Court of Texas in Travis County and is No. 56252 on the docket of said Court and is styled The State of Texas vs. V. E. Jackson, et al. The State Court granted the injunctive relief prayed for, and on the 25th day of October, 1935, it appointed J. C. Clopton and Bullock Hyder receivers of all the properties of the Debtor and of other properties

belonging to other defendants, and on October 30, 1935, said receivers took charge of the Debtor's said properties and have since been and are now in full possession and control of Debtor's properties, as well as the properties of other defendants, and have been and are now operating Debtor's said refinery, as well as the pipe line and oil wells owned by other defendants. The Debtor verily believes and alleges the fact to be that the State of Texas can not be successful in its said suit, and that the statutes, rules and regulations charged to have been violated and the statutes under which said suit is brought are each and all wholly void and unconstitutional, for that they offend against divers provisions of the Constitution of the United States.

8

During the time that the properties of the Debtor were handled and managed by and under the direction of its [fol. 22] present stockholders, they were, as is hereinbefore alleged, operated at a profit. In this connection the Debtor would show that at the time this corporation and its properties were acquired by the present stockholders in the early part of the year 1934, the refinery then owned by the corporation was a very small, incomplete and inefficient plant, but that since said time the Debtor has steadily increased the efficiency of its refinery and improved the same to such an extent that at the time of the filing of this petition, its said refinery is one of the most complete, modern and efficient refining plants in the East Texas Oil Field. From the operations of said refinery during this period, the Debtor has expended on said refinery a sum in excess of $200,000.00 for equipment and improvements. That said refinery is now complete and it will not be necessary to make any further improvements or additions to said refinery, except ordinary repairs, and that said refining plant will be capable of continuing operations, with the ordinary and usual repairs for maintenance, for a period of from three to five years from the time of the filing of this petition. The Debtor would show that its debts, as set out in paragraph 4 of this petition, are now due and past due, and as shown by said paragraph 4, it does not now have funds on hand sufficient to discharge such indebtedness. The Debtor respectfully shows to the Court that the State receivership proceeding hereinbefore mentioned, no plan for the reorganization of the Debtor has been proposed and

none is contemplated, nor has any effort been made in such receivership to discharge the debts and obligations of the Debtor, nor has any method been devised or proposed for such purpose. That the properties of the Debtor are not, under the State receivership, being operated in a business-like manner and at a profit, but are operated at full overhead expense, with the additional expense of receivership, [fol. 23] and at about one-third capacity and at a loss, and that no debts are being paid or can be paid under the present character of operation by the State Receivers. The following is a list of the creditors of the Debtor, together with the amounts due them:

Creditors of Debtor

| | |
|---|---|
| Nov. 30, 1935—State of Texas, Gasoline tax and asserted lien | $69,334.04 |
| Nov. 30, 1935—United States gasoline tax and asserted lien | 37,109.11 |
| Oil, pipe line and other taxes | 5,589.15 |
| Gasoline tax due by State Receivers operating plant | 7,942.98 |
| Oil, pipe line and other taxes | 35.10 |
| Total to United States | $50,676.74 |
| Materialman's Lien Creditors: | |
| Arkansas Pipe & Supply Co. | 1,444.42 |
| T. H. Anderson | 963.29 |
| Atlas Supply Co. | 9,460.88 |
| J. B. Beard Corp | 1,684.05 |
| Briggs-Weaver Machinery Co. | 876.19 |
| Dallas Belting Co. | 658.19 |
| Dodd Pipe & Supply Co. | 1,514.11 |
| Gladewater Pipe & Supply Co. | 704.66 |
| Hall Lumber Co. | 4,382.14 |
| Industrial Scientific Supply Co. | 1,296.28 |
| Linde Air Products Co. | 1,565.00 |
| Louisiana Iron & Supply Co. | 261.94 |
| Mosher Steel Co. | 5,458.18 |
| Oil Well Supply Co. | 1,777.81 |
| Refinery Casting Corp. | 423.20 |
| John Tancred | 5,525.89 |
| Total | $37,996.14 |

[fol. 24] Contract Lien Creditors:

| | |
|---|---|
| Clark Bros. | 2,012.50 |
| R. E. Bryan, Inc. | 613.06 |
| Underwood-Elliott-Fisher Co. | 830.00 |
| Eagle-Pitcher Sales Co. | 200.00 |
| Fredonia Securities Co. | 76.23 |
| General American Tank Car Corp. | 7,000.00 |
| Total | $10,731.79 |

Common Creditors (Unsecured):

| | |
|---|---|
| Ables Supply Co. | 115.55 |
| Alice Manufacturing Co. | 37.67 |
| George Auten | 17.66 |
| Walter Bennett Motor Co. | 2.00 |
| M. L. Bath & Co. | 31.60 |
| R. E. Bryan, Inc. | 58.80 |
| T. B. Butler Pub. Co. | 125.00 |
| Ballard Drug Co. | 20.20 |
| Ralph Brodey Co. | 124.31 |
| The Brown Instrument Co. | 276.57 |
| Burdett Oxygen Co. | 154.36 |
| Calmec Manufacturing Co. | 172.01 |
| D. W. Canfield Ins. Agency | 751.12 |
| The Coen Co. | 200.00 |
| The Coerver Co. | 285.00 |
| Commerce Clearing House | 100.00 |
| The Crain Co. | 79.75 |
| Frank Chandler | 13.53 |
| The Chicago Journal of Commerce | 7.50 |
| Cooper-Bessemer Co. | 56.00 |
| Cooper-Keller Oil Co. | 6.26 |
| Cash | 700.00 |
| Cash | 797.52 |
| Cash | 261.46 |
| Mabel Clark | 50.00 |
| T. L. Cline | 36.50 |
| Bradley & Blake | 6,000.00 |
| [fol. 25] The Durion Co. | 27.25 |
| Duro-Test Corp. | 44.20 |
| Day & Night Garage | .80 |

| | |
|---|---|
| Duec Metallic Corp. | 5.00 |
| G. E. Dixon | 58.50 |
| Elliott & Waldron Abst. Co. | 55.00 |
| East Texas Oil Co. | 18.22 |
| Fisher Governor Co. | 239.14 |
| Gladewater Ind. School Dist. Tax | 91.97 |
| Harry Goldmand | 5.90 |
| Green Bros. | 685.05 |
| Gregg County Tax Collector | 157.50 |
| Gladewater Daily News | 16.00 |
| Gladewater Water & Sewage Co. | 191.98 |
| Gladewater Pipe & Supply Co. | 78.75 |
| Harberson-Walker Refractories | 3.68 |
| Henderson Glass Co. | 73.50 |
| Holley Motor Co. | 41.40 |
| Home Furniture Co. | 29.15 |
| Helms Printing Co. | 10.00 |
| Hodges Motor Co. | 3.36 |
| Harrell & Allen | 10.00 |
| H. H. Howell | 540.35 |
| J. H. Harper | 145.52 |
| Herley Gasoline Co. | 9.24 |
| O. L. Hay | 61.00 |
| John E. Haynes | 75.00 |
| Ideal Electric Co. | 69.84 |
| Interstate Electric Co. | 271.45 |
| International Derrick & Equipment Co. | 200.00 |
| P. F. Jennings | 71.15 |
| V. E. Jackson | 250.01 |
| Kennon's Tin Shop | 250.01 |
| Kansas City Testing Laboratories | 7.50 |
| Kilgore Ice Co. | 42.00 |
| Kenebrew Ice Co. | 21.00 |
| Liberty Mfg. Co. | 162.94 |
| Lincoln Tank Co. | 7.55 |
| P. F. Magee Co. | 244.76 |
| [fol. 26] Malakoff Brick Co. | 113.00 |
| Mid-West Pipe & Supply Co. | 23.00 |
| Monroe Calculating Machine Co. | 55.65 |
| McWilliams Hdw. & Furn. Co. | 2.00 |
| McKesson-Crowdus Co. | 21.00 |
| Mathiwson Alkali Works | 383.25 |
| J. P. McGee | 62.50 |

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|---|---|
| D. L. Hertsbacher | 75.00 |
| Motor Finance Co. | 54.05 |
| A. J. McDonald-Bailey Sheppard | 1,624.50 |
| R. J. McMurry | 2,500.00 |
| Nan O'Rourke | 50.00 |
| A. B. Furington | 41.20 |
| Postal Telegraph & Cable Co. | 12.79 |
| Plains Oil & Gas Co. | 119.37 |
| B. S. Pruitt | 100.00 |
| Pearlstone Ash Grocery Co. | 4.75 |
| P. S. Riddle Hardware Co. | 5.52 |
| Rose Pipe & Supply Co. | 8.68 |
| Ross Mehan Founderies | 26.41 |
| Royal Typewriter Co. | 90.00 |
| Roy Roberts | 54.55 |
| L. A. Rankin | 159.50 |
| R. E. Rowland | 75.00 |
| Republic Underwriters | 146.51 |
| Shreveport Pipe & Supply Co. | 3.75 |
| H. P. Smead | 201.00 |
| Smith Separator Co. | 7.39 |
| Southwestern Gas & Electric Co. | 819.01 |
| Spencer-Harris Machine Shop | 358.88 |
| Standard Sanitary Mfg. Co. | 18.17 |
| Steve's Pipe & Supply Co. | 2.75 |
| H. K. Stahl Co. | 4.38 |
| Suburban Fuel Oil Co. | 10.97 |
| Suspense | 1,138.31 |
| Star Clothing House | 123.56 |
| Spartan Schools | 561.00 |
| Southwestern Bell Telephone Co. | 347.42 |
| [fol. 27] Pete Skouby | 121.75 |
| Twenty Printing Company | 1,839.50 |
| Texas Oil Products | 559.97 |
| Texas State House Reporter | 60.00 |
| Texas Pacific Railway Co. | 12.63 |
| Todd Sales Co. | 286.73 |
| Texan Oil Co. | 12.00 |
| Trans-American Petroleum Co. | 23.07 |
| Texas Railroad Commission | 74.80 |
| Traders in General Insurance Co. | 497.93 |
| Wallace Tobin | 15.00 |
| Taxes—State and County | 47.25 |

| | |
|---|---|
| Union Steam Pump Co. | 101.57 |
| United States Fidelity Co. | 10.00 |
| United States Rubber Products Co. | 50.04 |
| Underwood-Sundstrand Agency | 18.00 |
| Universal Match Co. | 27.25 |
| D. B. Vannest | 174.40 |
| Wooley Welding Co. | 14.81 |
| Wayne Co. | 11.25 |
| Ward Studio | 7.50 |
| West Disinfectant Co. | 8,45 |
| Wooley Tool Service Co. | 32.98 |
| Woodward-Wight Co. | 114.81 |
| Western Union Tel. Co. | 257.84 |
| McCord Radiator Co. | 4.06 |
| M. Toler | 125.00 |
| Briggs-Weaver Big Weave Machine Co. | 26.80 |
| Texan Motor Oil Co. | 39.60 |
| Louise Toler | 37.50 |
| White Super-Service Station | 381.57 |
| W. F. Whitgen | 87.50 |
| Total | $28,991.61 |

There are 118 common creditors listed above of $300.00 each or less, a total of $8,513.93.

[fol. 28] 9

The properties of the Debtor, if operated in a business-like manner, can in a reasonable length of time pay the present past due debts, and thereafter pay the debts of the Debtor as they mature. The Debtor alleges that it is to the best interest of the creditors of the Debtor, as well as to the Debtor itself and its stockholders, that a plan of reorganization be formulated and a method for the payment of the debts devised. The Debtor has drawn a plan of reorganization, which it files at the same time it files this petition, under which plan, if confirmed by the Court, the Debtor believes that it can protect and safeguard its creditors and their rights and discharge all of the indebtedness owed by it. The Debtor alleges that unless some plan for reorganization and some method for the payment of its debts be devised, that certain of its secured creditors will institute foreclosure proceedings upon its properties and

that insolvency and bankruptcy will ensue, to the irreparable injury of the Debtor and of its creditors generally. The Debtor alleges that such reorganization and method for the discharge of its debts can be more promptly and satisfactorily devised and more efficiently carried out in this Honorable Court and under the provisions of Section 77-B of the Bankruptcy Act of 1898 as amended, than could be done in any other kind or character of proceeding, including any receivership. The Debtor alleges that trustees should be appointed by this Honorable Court to take over, manage and operate its said properties with such other powers and duties as the Court might see fit to give and impose upon them, in order that said reorganization may be efficiently completed and the debts of the Debtor be discharged and extinguished.

[fol. 29] Wherefore, the Debtor prays that:

1. This petition be approved as properly filed under Section 77-B of the Bankruptcy Act of 1898 as amended.

2. That a trustee or trustees be immediately appointed by this Court to take possession of all of its properties and to demand and take same from the possession of J. C. Clopton and Bullock Hyder, receivers appointed by the District Court of Travis County, Texas, 126th Judicial District, in Cause No. 56252, styled The State of Texas vs. V. E. Jackson, et al., and that said trustee or trustees be authorized and directed to operate the Debtor and its properties as a going concern and to carry on its business; to carry out and perform its existing contracts; to enter into new contracts in the ordinary course of business for the benefit of the Debtor and its creditors; to pay all obligations incurred in the future in the ordinary course of business; to borrow such funds as the Court may find necessary; to carry out under the directions of the Court the plan of reorganization approved and confirmed by the Court; and to pay all the debts and claims against the Debtor approved by the Court under the plan of reorganization; and to do any and all other things necessary and proper to be done for the efficient operation of the Debtor and its properties and for the completion of the plan of reorganization confirmed by the Court, as the Court shall find meet and proper; and that such trustee or trustees be required to make reports in and to this Court at such times

and in such manner as the Court shall find proper; and that such other and further orders, writs and decrees issue as the Court shall find necessary and proper.

3. That a hearing be held within thirty days, as provided by law, to determine whether or not the trustee or trustees appointed by this Court shall be continued as [fol. 30] permanent trustees; and for such other hearings and notices as shall be lawful and proper; and that all of said proceedings herein prayed for and such further proceedings as may be had herein be had in accordance with the provisions of Section 77-B of the Bankruptcy Act of 1898 as amended.

Trinity Refining Company, (Signed) by T. W. Sowell.

Attest: (Signed) L. A. Rankin, Secretary. (Signed) T. W. Sowell, J. B. Sowell, L. A. Rankin, The Stockholders of the Trinity Refining Company. ——, Attorney for Trinity Refining Company.

*Duly sworn to by T. W. Sowell. Jurat omitted in printing.*

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[fol. 31] EXHIBIT TO PETITION

THE STATE OF TEXAS,
County of Dallas:

I, L. A. Rankin, on oath state that I am Secretary of Trinity Refining Company, a corporation, and that the Board of Directors of said corporation did in Dallas, Texas, on the 16th day of December, 1935, at a special called meeting for said purpose, pass the following resolution:

"Resolved that Trinity Refining Company, a corporation, as Debtor, file a petition in the District Court of the United States for the Northern District of Texas and the Fort Worth Division, for a reorganization of said corporation in accordance with the provisions of Section 77-b of the Bankruptcy Act of 1898 as amended; and

Simultaneously with the filing of said petition, it file, submit and propose a plan of reorganization as provided in said Section, as follows:

(The foregoing plan is here copied in the minutes of the corporation.)

Resolved that said action be the unanimous vote and act of the Board of Directors.

J. B. Sowell, T. W. Sowell, L. A. Rankin."

(Signed) L. A. Rankin.

Subscribed and sworn to before me, this the 17th day of December, 1935. (Signed) Helen Vaughan, Notary Public, Dallas County, Texas. (Seal.)

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[fol. 32] IN UNITED STATES DISTRICT COURT

[Title omitted]

PLAN OF REORGANIZATION

To the Honorable Judge of said Court:

Comes now the Debtor in conformity with and under the terms and provisions of Section 77-B of the Bankruptcy Act of 1898 as amended and at the time of the filing of the petition for reorganization, files, submits and proposes the following as a plan of reorganization:

1

All the fixed properties of the Debtor shall be retained by the Debtor, subject to the interests, claims or liens of the creditors and the provisions of this plan, and shall be operated as a going concern under the orders of the Court.

2

The creditors of the Debtor are divided into the following classes:

(a) Tax lien creditors:

(1) State of Texas $69,334.04.

(2) United States $50,676.74.

[fol. 33] (b) Materialman's lien creditors; listed in petition $37,996.14.

(c) Contract lien creditors; listed in petition $10,731.79.

(d) Common creditors (unsecured); listed in petition $28,999.61.

The Debtor makes no attempt to classify the lien creditors as to which liens are superior and junior, but such classification should be made by the Court.

3

The capital stock of the corporation consists of 5,000 shares non-par, minimum $25,000.00, fully paid and owned by J. B. Sowell, and 500 shares of the par value of $100.00 per share or $50,000.00, fully paid, 498 shares owned by J. B. Sowell, one share owned by T. W. Sowell and one share owned by L. A. Rankin. The said stockholders of the Debtor shall deposit for the benefit of the secured creditors the entire capital stock of the corporation, subject to the further provisions of this plan, in the treasury of the Debtor or in the registry of this Court, as the Court may direct, which stock shall be held as additional and collateral security for the benefit of the otherwise secured creditors.

4

Upon confirmation of this plan, there shall be issued by the Debtor to each such creditor a certificate of indebtedness, to be in the amount of the debt of the creditor at the date of the issuance of said certificate, which certificate shall bear interest at the rate of eight per cent per annum from its date. Such certificate shall be payable in sixteen [fol. 34] equal monthly installments, together with interest as it accrues. The first installment shall be due and payable on or before forty-five days after the date of such certificate; the next to be due and payable thirty days after said forty-fifth days; and the remaining installments to be due and payable one every thirty days thereafter until the full amount of principal and interest has been paid.

5

Upon default in the payment of three consecutive installments on the certificate of indebtedness, as provided in paragraph 4 above, each creditor holding such defaulted certificate of indebtedness shall be entitled to make known to the Court the fact of such defaults, together with notice to the Debtor, and the Court, after ten days notice to the Debtor, upon being satisfied that the plan of the Debtor as herein submitted is unworkable and that a satisfactory, workable plan can not be devised, may direct that there be

delivered to such creditor such portion of the stock as the unpaid portion of his debt bears to the total unpaid indebtedness of the secured creditors.

6

The certificate of indebtedness shall be subject to call of the Debtor and retirement at any time by the payment to the creditor of the amount then due him and remaining unpaid upon the certificate of indebtedness. Upon such payment to the creditor, the certificate of indebtedness shall ipso facto become null and void and the debt of the creditor fully discharged, and the Court shall direct that there be returned to the stockholders that proportion of the stock that is equal to the proportion that the certificate of indebtedness paid bears to the total of the certificates of indebtedness issued.

[fol. 35]

7

The certificates of indebtedness shall be transferrable only upon the books of the Debtor, and the Debtor can discharge the certificates of indebtedness and the debt of a creditor and retire a proportionate amount of stock in the treasury of the Debtor or registry of the Court upon payment to the person or corporation shown on the books of the corporation to be the holder of the debt and certificate of indebtedness. The owner of the debt evidenced by the books of the corporation shall be held to be the owner of the certificate of indebtedness.

8

Neither the placing of said stock in the treasury of the Debtor or the registry of the Court for the benefit of the creditors, nor the certificates of indebtedness, nor this plan, nor the acceptance by the creditors of any of the benefits of this plan, nor any other thing done under this plan shall in any wise or manner impair or diminish any right, lien, claim or security of any kind or character which such creditor now has or may be entitled to, and all the rights, liens, claims and securities of such creditor shall be and are hereby brought forward and continued in full force and effect as they existed at the time of the filing of the petition for reorganization, save and except the extension of the time for payment of the debt of such creditor in accordance with this plan.

9

The provisions of paragraph 5 hereof shall be cummulative of any and all rights and remedies which the secured creditors had or may be entitled to by virtue of their respective debts, rights, liens, claims and securities, and of the provisions of the Act of Congress under which the petition is filed.

[fol. 36]

10

Each class of creditors, whether two-thirds thereof or not shall accept this plan, are adequately protected by this plan for the realization by them of the value of their interests, claims or liens by the retention of the properties of the Debtor, subject to such interests, claims or liens, as provided in paragraph 1 of this plan.

11

There are 118 creditors whose claims are each $300.00 or less, aggregating $8,513.92, which claims, upon the acceptance of this plan, may, under the direction of the Court, be paid in cash in full.

12

The properties of the Debtor shall be operated as a going concern under the orders of the Court: under this plan

(a) There shall be first paid in cash as they accrue the administrative expenses of the plan and the operation and maintenance expenses of the plant of the debtor.

(b) Under the present prices and markets, the operation of the plant of the Debtor under experienced business management should net between fifteen and twenty thousand dollars per month. There shall be monthly set aside such amount as is required to discharge as they mature the monthly installments to the secured creditors under this plan.

(c) Of the amount then remaining from the operation of the plant, 75 per cent shall be monthly paid to the common creditors (unsecured) to discharge their indebtedness, and [fol. 37] 25 per cent shall be monthly paid to the present stockholders of the Debtor.

(d) After the indebtedness due the common creditors (unsecured) have been fully paid under this plan, then the

money remaining on hand from the operations of the plant of the Debtor, after the payment of the debts and claims specified in subdivisions (a) and (b) of this paragraph, shall as it monthly accrues be applied as follows: (1) 50 per cent shall remain in the treasury of the Debtor for any emergency or contingency that may then exist or that may arise and subject to the orders of the Court; and (2) 50 per cent shall be paid to the present stockholders of the Debtor.

Wherefore, Debtor, in conformity with a resolution of its board of directors adopted at a meeting held in Dallas, Texas, on the * * * day of December, 1935, submits the above and foregoing as a plan of reorganization within the provisions of Section 77-B of the Bankruptcy Act of 1898 as amended, and asks that such notice be given as within the judgment of the Court is necessary and proper for a hearing upon this plan and any objections that may be made thereto and that upon such hearing, the Court confirm the plan; and for such orders and decrees of the Court as may be necessary and proper for the carrying out and execution of said plan for reorganization.

Trinity Refining Company, a corporation, by T. W. Sowell, President.

Attest: L. A. Rankin, Secretary.

——— ———, ——— ———, Attorneys for the Debtor.

[fol. 38] The State of Texas,
County of Dallas:

Before me, the undersigned authority, on this day personally appeared J. B. Sowell, T. W. Sowell and L. A. Rankin, who being duly sworn, on oath state that they are all of the stockholders of Trinity Refining Company, a corporation. That all of the stock of said corporation has been paid for and issued. That J. B. Sowell owns all of the 5,000 shares, non par, $25,000.00 minimum, and owns 498 shares of the par stock; that T. W. Sowell owns one share of the par stock, and L. A. Rankin owns one share of the par stock of said corporation. That there is no other issued outstanding stock. That they have read and are familiar with the petition of Trinity Refining Company, called Debtor, for a reorganization under the provisions of Section 77-B of the Bankruptcy Act of 1898 as amended, and that the matters and things therein alleged as facts are true, and that they, each

for himself and as a stockholder of the Debtor, accept the plan of reorganization to which this affidavit is attached and agree to be bound thereby and be bound by the orders of the Court confirming the same and directing its execution, and here and now, in compliance with the plan, tender with the plan to the Court all of the certificates of stock of said Debtor, to be dealt with as the Court *any* direct in accordance with said plan.

That said Debtor has the following executory contracts:

(1) A contract with the Texas & Pacific Railway Company for the construction and use of a spar track from the main line of the Texas & Pacific Railway to, near and adjacent the plant of the Debtor in Gladewater, Gregg County, Texas.

(2) A contract with General American Tank Car Company, of Chicago, Illinois, for the rental and use of tank [fol. 39] cars for the shipping of petroleum oil and its products.

(3) A contract of lease of about one-half acre of land adjoining the land on which the refining plant of Debtor is located, which one-half acre of land was leased for the erection of the office building of the Debtor.

That no claims and shares of stock have been purchased or transferred by either of the affiants after the commencement or in contemplation of the proceedings for the reorganization of the Debtor.

That no unexpired leases have been rejected and surrendered by Debtor.

T. W. Sowell. J. B. Sowell. L. O. Rankin.

Subscribed and sworn to by J. B. Sowell, T. W. Sowell and L. A. Rankin before me, this the 17th day of December, 1935. Helen Vaughan, Notary Public, Dallas County, Texas.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER APPOINTING TRUSTEE, ETC.

On this the 18th day of December, 1935, there was presented to the Judge of this Court the petition of the Trinity [fol. 40] Refining Company, a corporation, petitioning for corporate reorganization under Section 77-B of the Bankruptcy Act of 1898 as amended, and the said Judge having duly considered said petition and being satisfied that such petition complies with the provisions of said law and has been filed in good faith, said petition is accordingly approved as properly filed in compliance with said law, and as filed in good faith.

And it is further ordered by the Judge of this Court that David Donaghue, of Fort Worth, Texas, be appointed trustee of all of the properties of said debtor and of the debtor's estate, subject to the further orders of the Court; that said trustee duly execute a bond as trustee in the sum of $10,000.00, payable to the United States, conditioned in terms of law for the faithful performance of his duties as trustee, and upon the execution and approval of said bond, that the said trustee be and he is hereby authorized, empowered and directed to demand, receiver and take charge of all properties of the debtor wheresoever situated, and to continue the operations of its business and properties in the usual and due course of business; to pay all obligations incurred by him in the ordinary course of business, but that no new ventures are to be undertaken or unusual expenditures made except upon the orders of this Court.

And it is further ordered that said debtor and J. C. Clopton and Bullock Hyder, receivers appointed by the District Court of Travis County, 126th Judicial District of Texas, and any and all other persons having control or possession of any of the properties or estate of said debtor, forthwith deliver to said trustee herein appointed all of the property, assets and effects of debtor now in the possession or control of them or either of them, and that said debtor and all other persons, firms, corporations, and all creditors of said debtor as well as each of their attorneys, agent and servants and all sheriffs, marshals and other officers, deputies and their

[fol. 41] employees be and they are hereby jointly and severally restrained and enjoined from removing, transferring or otherwise interfering with the property, assets and effects of the above named debtor, and from prosecuting, executing or suing out of any Court any process, attachment or other writ for the purpose of taking possession, impounding or interfering with any property, assets or effects of the said debtor, and from molesting, disturbing or interfering with the trustee named and appointed herein and hereby in the discharge of his duties.

It is further ordered that a hearing shall be held on the 13th day of January, 1936 at 10:00 a. m., in the United States District Court room in the City of Fort Worth, Texas, at which time and place all creditors and stockholders may appear and be heard in reference to debtor's proceedings for corporate reorganization and in reference to Debtor's petition, the continued possession of said properties of Debtor in the hands of said trustee, and such objections, if any there be, to the pursuing of said proposed corporate reorganization.

It is further ordered that said trustee shall, upon qualification immediately give notice of the time and place of said hearing herein ordered, by publishing once a week for two consecutive weeks prior to the date of said hearing a notice thereof in Fort Worth Star Telegram, a newspaper of general circulation published in Fort Worth in the County of Tarrant, State of Texas, and shall in addition thereto, give notice to all persons, both creditors and stockholders, whose interests may be affected by said proposed plan of reorganization by mailing to them and each of them at their last known address a copy of this order.

It is further ordered that the trustee herein named shall file schedules and such information as is available to him to disclose the conduct of the Debtor's affairs and the fairness of the proposed plan of reorganization.

It is further ordered that the trustee shall prepare and file a list of all known creditors of or claimants against the [fol. 42] Debtor or its properties, and the amounts and character of their debts, claims and securities, and the last known post office address or place of business of each creditor or claimant.

It is further ordered that the claims and interests of creditors shall be filed with the trustee within thirty days

from the date of this order, and after which no such claim or interest may participate in this plan, except on order for cause shown, which claim and interest filed shall state the amount of the debt or claim, the name and address of the creditor or claimant, the security, if any, to which shall be attached a copy of any contract or instrument evidencing such security, all duly verified.

(Signed) James C. Wilson, United States District Judge.

Filed 18th day of December, 1935. Geo. W. Parker, Clerk, by Anna H. Powers, Deputy.

I hereby certify that the foregoing is a true copy of the original thereof now in my office. Attest: Dec. 18, 1935.

Geo. W. Parker, Clerk, by C. B. Buckley.

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IN UNITED STATES DISTRICT COURT

NOTICE TO CREDITORS, ETC.

To the Creditors of Trinity Refining Company:

In compliance with the order of the Court appointing me trustee of the properties of Trinity Refining Company, I herewith attach a copy of such order.

You are requested to forthwith and within thirty days from the date of the order, December 18th, 1935, prepare and mail to me, David Donoghue, Trustee, Fort Worth [fol. 43] National Bank Building, Fort Worth, Texas, a statement showing the following:

(a) The amount of your debt or claim, against either Trinity Refining Company or Lone Star Refining Company.

(b) The kind of security, if any, to such debt or claim.

(c) A copy of any contract or instrument evidencing such security.

(d) Your present correct name and address.

All of which to be duly sworn to.

David Donoghue, Trustee.

December 23rd, 1935.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PLEA TO THE JURISDICTION AND MOTION TO DISMISS DEBTOR'S PETITION FOR REORGANIZATION AND MOTION FOR RESCISSION OF THE ORDER OF THIS HONORABLE COURT ENTERED AND FILED DECEMBER 18, 1935.

To said Honorable United States District Court:

Appearing specially and only for the purposes hereinafter stated, come J. C. Clopton and Bullock Hyder, the [fol. 44] duly appointed, qualified and acting receivers heretofore appointed by the District Court of Travis County, Texas, 126th Judicial District of Texas, and file their plea and motion to the jurisdiction of this Honorable Court, in response to an order by this Court and notices issued by order of this Court directing them to deliver possession and control of the properties and estates of said debtor over to the Honorable David Donoghue, heretofore appointed by this Honorable Court as trustee, and in this connection respectfully show to the Court:

I

That it appears from the petition filed by debtor that debtor Trinity Refining Company is a corporation organized and existing under and by virtue of the laws of the State of Texas, and that no authority for the filing of the petition for reorganization under section 77b of the bankrutpcy act of 1898, as amended, has been authorized by the requisite number of the Board of Directors of said corporation, as required by the laws of the State of Texas and laws pertaining to bankruptcy; and as a consequence this Court has acquired no jurisdiction and the order approving the petition of debtor as being regularly filed should be vacated and the petition dismissed.

II

That this Honorable Court is without jurisdiction to demand of these receivers possession of the property seized and taken over originally by them under the orders of the Honorable District Court for the 126th Judicial District of Travis County, Texas, since they hold such prop-

erty as officers and agents of such Court, and that any summary order issuing out of this Court would cause such receivers to violate the orders of the State Court appointing them, and that they have no authority under the law to [fol. 45] surrender the property and estate held by them save by order of the Court appointing them; and that such turn-over order, if any be authorized under the law, should be directed, in the exercise of due comity existing between Courts of concurrent and coordinate jurisdiction, to the Judge of said Court, by petition of the trustee appointed by this Honorable Court directed to the Judge of said State Court for a release of the property held by the agents of said State Court.

III

That heretofore on the 12th day of October, 1935, the State of Texas by and through William McCraw, the duly elected, qualified and acting Attorney General of the State of Texas, entered suit in the District Court in and for the 126th Judicial District of Travis County, Texas, seeking the enforcement and collection of certain fines, penalties and interests incurred by the debtor herein and its stockholders, manager and agents, as result of numerous violations of the conservation laws of the State of Texas. That said State of Texas in seeking enforcement and collection of said fines, penalties and interest also was asserting and is still asserting a statutory lien upon all of the property, estate and appurtenances of said debtor and the foreclosure thereof to secure the payment of said penalties; and in such suit it is prayed that the sum of $791,000 in fines, penalties and interest be recovered of and from the Trinity Refining Company, debtor, and J. B. Sowell, T. W. Sowell and C. B. Sowell, and V. E. Jackson, doing business as Lone Star Refining Company; and that the statutory lien as provided for in Article 7065a, Sec. 7, R. C. S. of the State of Texas (Acts of 1933, 43rd Leg., p. 75, ch. 44, sec. 7) be foreclosed; and, further, that a receiver be appointed to take over, hold and operate said properties for the purpose of enforcing such fines, penalties and interest, and [fol. 46] the foreclosure of said lien. A copy of the petition and trial amendment filed by the State of Texas in said cause is attached hereto, marked "Exhibit 'A'" and

made a part hereof for all pertinent purposes. That in response to the prayer in said State's petition, notice was duly served upon the Trinity Refining Company, J. B. Sowell, T. W. Sowell, C. B. Sowell, Minor Pipe Line Company and V. E. Jackson, notifying said parties to come in on the — day of ——, A. D. 1935, and show cause why a receiver should not be appointed as prayed for and why injunction should not issue; and upon the day appointed for such hearing, the parties defendant in said suit came not, but appeared by counsel, said counsel stating substantially to the Court that there had been filed in the United States District Court in and for the Western District of Texas, a petition for the removal of said cause then pending in the 126 Judicial District Court of Travis County, Texas, by Trinity Refining Company, J. B. Sowell, T. W. Sowell, C. B. Sowell, Minor Pipe Line Company and V. E. Jackson.

The petition for removal alleged substantially that the enforcement of the statute of the State of Texas provides for the imposition of penalties for the violation of the conservation laws of the State of Texas, which statute and enforcement thereof was denying the Trinity Refining Company and J. B. Sowell, T. W. Sowell, C. B. Sowell, Minor Pipe Line Company and V. E. Jackson equal civil rights under the Constituteion of the United States and was denying to them the equal protection of the laws. That by reason of the filing of the petition for removal the State Court, to-wit, the District Court for the 126th Judicial District, Travis County, Texas, had no jurisdiction to proceed further in the matter.

Counsel for the Trinity Refining Company, J. B. Sowell, T. W. Sowell, C. B. Sowell, Minor Pipe Line Company and [fol. 47] V. E. Jackson, after making the above appearance and statement to the State Court, retired from the Courtroom. Thereupon, the Attorney General announced ready for trial and advised the Court that in his opinion the petition for removal was not well founded in the law, and as a consequence the mere filing of the petition could not operate as a hindrance to the State authorities and the State Court in proceeding to establish the State's claim for penalties by reason of the alleged violations in the petition filed in said cause. The District Court, after considering the matter, directed the State's attorney to proceed with the hearing.

The testimony of a number of witnesses was received by the Court, establishing the facts as alleged in the State's petition to the effect that numerous violations had been committed by debtor Trinity Refining Company, J. B. Sowell, T. W. Sowell, C. B. Sowell, Minor Pipe Line Company and V. E. Jackson against the conservation Laws of the State of Texas. At the conclusion of the hearing of evidence, the Court announced substantially that it was one of the most flagrant cases presented to him, showing violations of the conservation laws of the State of Texas, and that the case made by the State of Texas amply warranted the appointment of the receivers to take charge of the properties of the Trinity Refining Company.

The Court accordingly entered its order appointing the Honorable J. C. Clopton and Honorable Bullock Hyder receivers to take over all of the properties, assets and estates of the Trinity Refining Company, J. B. Sowell, T. W. Sowell, C. B. Sowell, Minor Pipe Line Company and V. E. Jackson, doing business as Lone Star Refining Company, a copy of said order appointing said receivers being hereto attached, marked "Exhibit 'B' " and made a part hereof for all pertinent purposes.

[fol. 48] As to the proceedings had and the record of the testimony taken before the District Court of the 126th Judicial District of Travis County, Texas, these receivers stand ready to tender a certified copy of same into this Court at the proper time.

That subsequent to the appointing of the receivers by the State Court, the defendants in said cause procured the issuance of a notice out of the United States District Court in and for the Western District of Texas, sitting at San Antonio, notifying the Attorney General and other State officers to appear in said Court on the — day of —— and show cause why an injunction should not issue restraining the further prosecution of the penalty suit in the State Court. Upon the day set for the show cause hearing, the State answered by filing a plea for the jurisdiction, asserting that the petitioners for removal were not afforded the privilege of removal under Section 74, U. S. C. A., and the Honorable R. J. McMillan, after hearing both sides, announced that in his opinion the petition for removal was not well founded, and that unless counsel for petitioners could at a subsequent date convince him other-

wise, he would enter an order remanding the cause to the State District Court. That on the — day of ——, 1935, the petitioners for removal joined in a motion to the United States District Court at San Antonio, moving for a remand of the cause attempted to be removed from the State Court. The Court, after considering the motion, entered its order remanding the cause to the State District Court. A copy of the petition for removal, a copy of the joint motion to remand, and a copy of the order remanding said cause, are attached hereto and marked "Exhibits 'C', 'D' and 'E', respectively.

That, after the remand of said cause, said receivers immediately qualified by giving the required bond, and took charge of the properties and estates and were in charge [fol. 49] of said property and estate of the Trinity Refining Company, J. B. Sowell, T. W. Sowell, C. B. Sowell, Minor Pipe Line Company and V. E. Jackson until summarily dispossessed by the Honorable David Donoghue, trustee under order of this Honorable Court.

IV

That on December 14, 1935, the State of Texas filed a suit by verified petition in the District Court for the 98th Judicial District of Travis County, Texas, in Cause No. 56,472 against V. E. Jackson, Trinity Refining Company, J. B. Sowell, T. W. Sowel, C. B. Sowell and Minor Pipe Line Company, by virtue of House Bill 247, passed by the 43rd Legislature of the State of Texas, as amended by House Bill 749, Acts of the 44th Legislature of the State of Texas, seeking the recovery of taxes, penalties and interest upon the properties of said parties, the sum of $104,084.47 incurred by reason of the activities of said parties in refining, manufacturing, producing, blending and compounding motor fuel and by making the first sale, distribution and use of motor fuel within the State of Texas, and by reason of the activities of such parties, a tax of four cents per gallon for each gallon of gasoline sold by said parties was incurred. The State of Texas in that suit was also seeking the foreclosure of a lien which by law is made first and prior to any and all other existing liens, upon all of the properties of any distributor of motor fuel as defined by law. That upon the filing of said petition, application was made for the appointment of a receiver. The

Judge of said Court, however, declined to appoint receivers to take charge of the properties and estates of said parties, for the reason that the receivers appointed by the District Court for the 126th Judicial District, Travis County, Texas, were then in possession of the properties and estates as a result of the filing of the suit of the State [fol. 50] of Texas against V. E. Jackson, Trinity Refining Company, J. B. Sowell, T. W. Sowell, C. B. Sowell and Minor Pipe Line Company, in the District Court of the 98th Judicial District of Travis County, Texas. That on the 8th day of January, 1936, it appearing to the Judge of the District Court for the 126th Judicial District of Travis County, Texas, upon motion, that there was on file in said Court Cause No. 56,476, wherein the State of Texas as plaintiff and V. E. Jackson, Trinity Refining Company, J. B. Sowell, T. W. Sowell, C. B. Sowell and Minor Pipe Line Company are defendants, the same being the suit originally filed in the District Court for the 98th Judicial District of Travis County, Texas, wherein the State of Texas was seeking recovery of Taxes, penalties and interests against V. E. Jackson, Trinity Refining Company, J. B. Sowell, T. W. Sowell, C. B. Sowell and Minor Pipe Line Company, and the Court after considering the motion of the State of Texas, entered an order appointing the Honorable J. C. Clopton and Bullock Hyder, receivers of the properties and assets of V. E. Jackson, Trinity Refining Company, J. B. Sowell, T. W. Sowell, C. B. Sowell and Minor Pipe Line Company, as prayed for in cause No. 56,476; and further adjudged and decreed that no additional bond should be given by said receivers and that the bond originally given by them in Cause No. 56,252 should be adequate. A copy of said order is attached hereto, marked "Exhibit 'F'" and referred to and made a part hereof for all pertinent purposes.

V

That by reason of the above, in the District Court of the 126th Judicial District of Travis County, Texas, and by reason of the filing of the suits by the State of Texas for the collection of taxes, fines, penalties and interests against Trinity Refining Company, V. E. Jackson, J. B. Sowell, [fol. 51] T. W. Sowell, C. B. Sowell and Minor Pipe Line Company, and the assenting of a lien and the foreclosure thereof upon the properties and estates of the said debtor

and the subsequent appointing of receivers and taking over of the properties and estates by the receivers so appointed, the properties and estates of the debtor are now in the exclusive jurisdiction of the Court of the State of Texas, and the existence of a valid statutory lien deprives this Honorable Court of jurisdiction to withdraw said properties and estates of the debtor from the Court of the State of Texas.

Wherefore, these receivers pray that by reason of the above, this Court should decline to take jurisdiction of this cause and the debtor's petition for reorganization should be disapproved and the petition dismissed, and that the summary order heretofore entered by this Court should be rescinded, and that the trustee appointed by this Court be ordered to deliver possession of the estates and properties into the hands of the receivers duly appointed by the District Court in and for the 126th Judicial District of Travis County, Texas.

William McCraw, Attorney General of Texas, William C. Davis, Assistant Attorney General; W. J. (Dick) Holt, Assistant Attorney General; T. F. Morrow, Assistant Attorney General; Joe Sharp, Assistant Attorney General, Attorneys for the State of Texas. Ben Greenwood, Attorney for Receivers.

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[fol. 52] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION TO DISMISS, ETC.

To the Honorable Judge of said Court:

Now comes the State of Texas, by and through William McCraw, its duly elected, qualified and acting Attorney General, Without waiving its plea to the jurisdiction, and without submitting to the jurisdiction of this Court, and appearing herein solely in opposition to the approval of debtor's, Trinity Refining Company, plan for corporate reorganization, and joined herein by Bullock Hyder and J. C. Clopton, Receivers of the assets of the Trinity Refining Company, in Cause No. 56,252 in the 126th Judicial District

Court of Travis County, Texas, and joined by Ben Greenwood, attorney for said Receivers under appointment of said State Court, respectfully show this Honorable Court that said plan of reorganization should not be approved, and that this Court should not assume jurisdiction of the res of this litigation, constituting the assets of the Trinity Refining Company, under Section 77b, of the Bankruptcy Act of the U. S. Code Annotated for the following good and sufficient reasons:

I

It is shown that no notice of the filing of debtor's pleading in this cause was given to the State of Texas, J. C. Clopton and Bullock Hyder, as Receivers, and Ben Greenwood as Attorney for said Receivers, prior to the filing of same; and no notice was given to them prior to the action [fol. 53] or entering of orders of this Honorable Court under date of the 18th day of December, 1935; and that no opportunity has presented itself prior to said order and prior to the action of this Honorable Court, for these parties to assert such rights, equities, claims, demands and liens in opposition to said plan heretofore.

II

That if it be considered by this Honorable Court that the State of Texas is not a creditor in that same is a sovereign, in that event it is shown that J. C. Clopton and Bullock Hyder have been duly appointed as Receivers of the properties named in debtor's bill by a Court of competent jurisdiction, and that Ben Greenwood has been appointed the Attorney of said Receivers by a Court of competent jurisdiction, to-wit the 126th District Court of Travis County, Texas, prior to the filing of debtor's bill in this cause; a true copy of the State of Texas pleading and supplemental pleading and order appointing said Receivers are attached hereto, marked "Exhibit A", and made a part of this pleading; and that there has accrued to said J. C. Clopton, Bullock Hyder and Ben Greenwood, by virtue of said appointment and services performed, a sum in excess of $1000.00 to each the said J. C. Clopton, Bullock Hyder, and Ben Grenwood, and that they and each of them in the event of the approval of debtor's plan by this Honorable Court constitute claimants with claims accrued for which they have liens in excess of $3000.00.

III

It is shown that J. C. Clopton and Bullock Hyder have, to-wit on the 8th day of January, 1936, have by the 126th District Court of Travis County, Texas, in Cause No. 56,476, wherein the State of Texas is plaintiff and V. E. [fol. 54] Jackson, et al., are defendants, a Court of competent jurisdiction, been appointed Receivers of the Properties of Trinity Refining Company, Incorporated, a corporation, operated by V. E. Jackson in the trade name of Lone Star Refining Company, as is shown by a true copy of the order of said 126th District Court appointing them, which is attached hereto, marked "Exhibit B" and made a part hereof.

IV

It is shown that debtor's plan, as represented by its pleading and by the true facts which exist, is not feasible, and that this Court should take no further jurisdiction of this suit, and the same should be dismissed for the following good and sufficient reasons:

A. That Trinity Refining Company is totally insolvent in that its assets represented by its stock as set forth in debtor's bill have heretofore been pledged to Mistress Lucille McMurray, survivor of the community estate of herself and R. J. McMurray, to secure the payment of a debt in the sum of $2500.00, as shown by the supplemental petition of the State of Texas hereinabove referred to, and by true copy of a petition duly verified, filed in Cause No. 6261a in Special District Court of Smith County, wherein Mistress Lucille McMurray, survivor of the community estate of herself and R. J. McMurray, deceased, et al., are plaintiffs, and T. W. Sowell, et al., are defendants, a true copy of which said petition is attached hereto, marked "Exhibit C" and made a part hereof.

B. Because debtor's plan discloses that debtor has a net worth of $144,027.44, based upon a tax lien to the State of Texas in the sum of $69,334.04, whereas in truth and in fact debtor owes the State of Texas the sum of $323,664.03, as [fol. 55] fully shown by certified copy of the State of Texas first amended original petition in Cause No. 56,476, to which is attached an audit of the account of the tax lien and penalties due by debtor to the State of Texas, which said peti-

tion and audit are attached hereto, marked "Exhibit D" and made a part hereof.

In this connection it is shown that the State of Texas' claim is a liquidated claim, for which the State has a statutory lien, prior to any and all other liens by virtue of H. B. No. 247 of the 43rd Legislature as amended by H. B. No. 749 of the 44th Legislature of the State of Texas, and also under the provisions of sec. 77b and 104 of Title 11 of the United States Code Annotated; that based upon the total assets as reflected by debtor's bill and its net worth, $144,027.44, deducted from its debt, including taxes, penalty and interest due the State of Texas in the sum of $323,664.03, discloses that debtor is insolvent, and based upon this claim alone, together with the other claims set forth in debtor's bill that debtor owes a valid and subsisting claim for which the State of Texas has a lien of $110,302.55 in excess of its total net worth as reflected by debtor's petition.

In this connection it is shown that L. A. Rankin is Secretary of the Trinity Refining Company, as reflected by debtor's petition, and has compiled an audit of assets and report of operations of the Trinity Refining Company as of December 1, 1935, being the period reflected by the figures set forth in debtor's petition wherein the assets of Trinity Refining Company, as reflected by said report of operations and audit of assets, discloses that the current assets of the Trinity Refining Company as of said date are $5,461.63, and the current assets as disclosed by debtor's petition are $77,608.96, leaving a discrepancy or difference as disclosed by the figures of said officers of said company of $72,147.33 as of the same date, to-wit December 1, 1935. [fol. 56] That the fixed assets as disclosed by debtor's petition on December 1, 1935, are $267,013.44; whereas the audit of the said L. A. Rankin as officer of said Company as of the said December 1, 1935, discloses the fixed assets of said Trinity Refining Company to be $244,410.13; disclosing a discrepancy of $22,603.31, as reflected by said audit of December 1, and debtor's petition, all of which is fully shown by a true copy of said audit and report of operations as of December 1, at 7 A. M., 1935, submitted herewith for the Court's consideration.

It is further shown in this connection that in debtor's petition it set forth as a representation to this Court that a

tax account and lien is due the State of Texas in the sum of $69,304.04; whereas in truth and in fact, debtor owes the State of Texas the sum of $323,664.03 for taxes and penalties and interest under the Motor Fuel Law, for which the State has a lien as fixed by the statutory laws of the State.

In this further connection it is shown that if debtor had paid the taxes due the State of Texas over the six months period as reflected by debtor's petition, wherein it shows a net earning of $109,763.42 for said period, that the debtor, instead of said earning would have shown and did actually sustain a loss of $85,533.46 over said six months period.

It is further shown in this connection that the figures compiled and shown in debtor's petition are based upon crude oil at $1.00 per barrel. That since the filing of this bill, and upon the presentation of this application and contest, that crude oil has advanced to substantially $1.15 per barrel in the East Texas Field, such as is average for the operation of Trinity Refining Company. That there has been substantially no advance in the price of products of crude petroleum oil, and that the continued operation of said plant on legal and allowable oil at $1.15 per barrel, [fol. 57] with no advance in the price of products thereof causes a wider spread, and offers less opportunity for profit than upon the operation of said refinery with oil at $1.00 per barrel.

C. That said plan is not feasible because the debtor in truth and in fact was indebted to the State of Texas for Motor Fuel taxes a sum of $323,664.03, and that in addition thereto, as shown by debtor's petition, there is due and owing numerous other creditors the aggregate sum of $131,260.92, which added to the claim for taxes by the State of Texas, totals $454,924.95, and that applying debtor's plan for reorganization found in paragraph four of "Plan of Reorganization" and giving each creditor a certificate for "the amount of the debt of the creditor at the date of the issuance of said certificate," and paying such amounts in sixteen equal monthly installments, together with interest as it accrues, and giving preference to the claim for taxes by the State of Texas, as provided by law, the monthly installment payable to the State of Texas would be in the amount of $20,229.00.

That applying the plan proposed by debtor to the total amount of creditor's claims, to-wit, $454,924.95, namely,

being payable in sixteen monthly installments, the monthly demand by all creditors upon the debtor, both secured and otherwise, would be $28,432.81. Protestants would show that by taking debtor's own figures said plan is not feasible, for in paragraph three of debtor's petition it is alleged "the operation of the properties of the debtor under experienced business management should net between fifteen and twenty thousand dollars per month. Giving the debtor the benefit of the maximum earning capacity per month, it would be impossible for debtor to meet the deficiency, to-wit $8,432.81, per month.

[fol. 58] D. Said plan is not feasible for the total net worth of debtor as shown under paragraph four, hearing, "Liability" is $144,027.44 as of December 1, 1935; and the total current liability of debtor as of December 1, 1935 aggregates $323,664.03. Accordingly, giving debtor the benefit of his alleged figure, to-wit, $144,027.44 as being its net value as of the present market, the debtor is in contemplation of the Bankrupt Law hopelessly insolvent, since its assets taken at a fair value are not sufficient to pay its obligations.

E. In addition to the above it is shown that the State of Texas in Cause No. 56,252, has filed its suit in the 126th District Court of Travis County, Texas, as hereinabove alleged, for penalties and fines due the State of Texas by the debtor jointly and severally with other defendants therein named in the sum of $791,000.00. That as alleged in said pleading the State of Texas has a lien upon the properties of debtor for the payment of said sum of $791,000.00. That said debt is in no sense taken into consideration by debtor in its application and petition before this Honorable Court. In this connection it is shown that the State of Texas' claim of $791,000.00 is a valid and substantial claim for said sum of money, for which the State has heretofore in a Court of competent jurisdiction offered proof of the validity of the allegations made in the State of Texas pleading in said cause in hearing before the Judge of said Court on the State of Texas application for the appointment of receivers therein. That a record of the State of Texas debt has been reduced to proof in the said 126th District Court, wherein it is shown, and which said record and proof is submitted herewith for the consideration of this Honorable Court, that the Trinity Refining

Company through its officers, agents and employees, together with the other defendants named in said cause No. 56,252, entered into a conspiracy to defeat the purpose of [fol. 59] the conservation laws of the State of Texas; and as proved in said cause, and which said proof is herewith submitted, the debtor in this cause through its agents and servants, ran to its stills at the Trinity Refining Company substantially 1,156,723 barrels of crude petroleum oil and processed same, deriving therefrom in excess of forty-five per cent of gasoline, upon which a substantial portion of the taxes due the State of Texas under the Motor Fuel Law of the State were not paid; and in addition thereto these protestants respectfully show to this Honorable Court as revealed by the record made in the 126th Jndicial District Court of Travis County, Texas, a large portion of said crude oil was produced and used without the payment of the gross production tax provided by the State of Texas, and produced and refined through debtor's refinery, without paying the royalty interest due the respective royalty owners. In this connection it is shown that the operation of debtor's refinery and the receipt and sale of the products refined and sold therefrom has been in violation of the laws of the State of Texas and without paying the respective participate in the proceeds thereof, a large sum of money, the exact amount of which is unknown to these protestants, but within the knowledge of the officers and operatives of the debtor herein. That the profits, net worth, and assets of the debtor as reflected by its petition and based upon the operation of debtor's refinery in an unlawful manner and in a manner which discloses a profit from its operation, which will not be disclosed upon its lawful operation.

In this further connection it is shown that the plan offered by the debtor for this Court's consideration must of necessity contemplate the lawful operation of its refinery, and when said refinery is operated by this Honorable Court under a trusteeship or otherwise, the royalty due the persons owning the wells with which debtor's refinery is connected must be paid, the gross production tax must be [fol. 60] paid, and the gasoline or motor fuel tax must be paid; and these protestants respectfully submit that from the record as disclosed in Court, herewith submitted for this Court's consideration, that the Trinity Refining Company cannot by virtue thereof show a profit sufficiently feasible

to discharge the debts of debtor in line with the plan set forth in debtor's bill.

In this further connection it is shown that the record made in the 126th District Court as aforesaid discloses a wanton and wilful violation of the proration laws as set forth in Title 102 and amendments thereto of the Revised Civil Statutes of Texas. That by virtue thereof the claim of the State of Texas in the sum of $791,000.00 for a substantial claim, supported by proof for which the State has a lien on the statutory basis of a sum not to exceed $1000.00 for each and every violation. That said violations are susceptible of proof and have been proved in a Court of record, for all of which reasons protestants respectfully show to this Court that in addition to the sum of $454,924.95, there exists the State of Texas' additional claim of $791,000.00, making a total indebtedness for which debtor is liable in excess of $1,245,000. That based upon debtor's admitted net worth of $144,027.44, said plan submitted by debtor for this Court's consideration is in no sense feasible to discharge its obligation.

F. That said plan submitted by debtor should not be approved by this Court because the State of Texas has a lien upon all of the products and properties of debtor as hereinbefore alleged, that debtor owns certain petroleum oil and petroleum oil products as reflected by its petition. That the refining of said oil and the sale of said products by this Honorable Court under a trusteeship is depriving the State of Texas of its property and/or property subject to the State of Texas' debt; further the operation of said refinery [fol. 61] and the paying of salaries and operating expenses through the authority of this Honorable Court is being paid out of the proceeds derived from the oil and products upon which the State of Texas has a lien for its debt.

G. That said plan should not be approved and this Court's continued operation of said properties for the reason that the laws of the State of Texas, to-wit, Ch. 44, p. 75, of Article 7065a, sub-section 6, Revised Civil Statutes of the State of Texas, of the 43rd Legislature as amended by the 44th Legislature in H. B. 749, provides that upon the failure to pay a tax due, that a distributor of gasoline or motor fuel is unauthorized to sell the same, and said law provides for forfeiture of the permit issued by the Comptroller. In this connection it is shown that permit to sell

motor fuel as a distributor has been forfeited. That no permit or authorization under the laws of the State of Texas has been issued to the Trustee in this cause, nor bond has been given by the Trustee in this cause as provided by the statutory law of the State *of* aforesaid. In this connection it is alleged on information and belief that the Trustee, his agents, servants and employees have been selling motor fuel from the plant of debtor at Gladewater, Texas. That the operation of said plant and the sale of motor fuel therefrom is wholly unauthorized by law in that the Trustee in this cause has not posted a bond payable to the State of Texas and conditioned for the full, complete and faithful performance of all the conditions and requirements of what is commonly known as the Motor Fuel Act of the State of Texas; and no such bond has been approved by the Comptroller of the State of Texas with the approval of the Attorney General, providing for the payment of all such taxes, penalties and interest at Austin, Texas, for the sale of Motor Fuel.

H. This plan is not feasible, and the same has not been filed in good faith, as contemplated by section 77b of Title [fol. 62] 11 of the Bankruptcy Act, for the reason that the petition filed herein, which purports to be the petition of debtor, Trinity Refining Company, a corporation, alleged to be organized under the laws of the State of Delaware, with a permit to do business in Texas, for the reason that the filing of said petition was not first authorized by proper resolution of the Board of Directors of said corporation as required by the laws of the State of Texas and the laws relating to the subject of bankruptcies; and that the signing of said petition for reorganization by T. W. Sowell, purporting to be the President of debtor, is not authorized by law, and that the signing of said petition of debtor by the purported stockholders of said corporation is not effective under the law to give this Court jurisdiction to administer the affairs under section 77b, Title 11, Bankruptcy Act, or under the laws of the State of Texas.

V

Protestants respectfully say to this Honorable Court that inasmuch as the State of Texas has by law a prior and paramount lien securing the taxes, fines and penalties due it by reason of the numerous violations established by the

State of Texas in its suit against debtor and others in the 126th Judicial District Court of Travis County, Texas, it should be permitted by this Court to go hence without further stay by the hand of this Honorable Court, and to proceed to final judgment in the suits brought by the State of Texas against debtor and others pending in the Court of Travis County, Texas, so that it be entitled to finally establish its claims. In this connection protestants say that if the claims as above set out, both liquidated and otherwise, be established against debtor in the Courts of the State of Texas, and preference be given to such claims as required both by the statutory law of the State of Texas and the laws [fol. 63] relating to bankruptcies, it will be utterly impossible for debtor to be able to ever reorganize under section 77b, but that such finally established claim as above set forth has and will render debtor totally and hopelessly insolvent as contemplated by the laws relating to bankruptcies; and that if this be the case the protestant, State of Texas, is entitled to have the properties and estates of debtor released from the custody of the Bankruptcy Court and replaced in the custody of the Receivers heretofore appointed by the District Court, 126th Judicial District, Travis County, Texas, so that the same may be held subject to the orders of that Court pending final outcome of the suits therein pending.

In view of the above, protestants respectfully show:

1. That the "Plan of Reorganization" filed herein offers no substantial relief.

2. That it is not feasible.

3. That it is not equitable. That its promises are indefinite and uncertain; that it shows an effort on the part of the debtor to escape penalties justly imposed by the Sovereign State of Texas for numerous and flagrant violations of the conservation laws of the State of Texas.

4. That the debtor has come into a Bankruptcy Court, sitting as a Court of Equity, with unclean hands.

Wherefore, these protestants pray that the petition of the debtor be dismissed, or that the proposed plan be rejected, and that the Trustee heretofore appointed by this Court be forthwith removed from the management, pos-

session and control of the properties and estates of the debtor; and that an order be entered by this Court directing said Trustee to forthwith place the properties and [fol. 64] estates of the debtor into the hands of J. C. Clopton and Bullock Hyder, heretofore appointed by the District Court, 126th Judicial District, Travis County, Texas.

In the alternative it is prayed that this Honorable Court enter its order granting leave to the Attorney General of the State of Texas to proceed in the District Court, 126th Judicial District, Travis County, Texas, in Causes Numbers 56,252 and 56,476, without stay, let or hindrance, so that said causes may proceed to final judgment looking to the establishment of the claims for taxes, fines and penalties as prayed for in said suits; that the administration of the estate by the Trustee be stayed during said period, and that upon establishing said claims and debts, then it be determined that Trinity Refining Company be insolvent. And if this Court should in its discretion then desire to retain jurisdiction of the properties and assets of the debtor, that it be ordered that the Trustee appointed by this Court be ordered to liquidate the business and assets of this debtor; and to proceed according to Section 45, Title 11, U. S. C. A., as provided for in Section 77b, Title 11, U. S. C. A., and that such claims for taxes, fines, and penalties of the State of Texas be classified according to Section 104, Title 11, U. S. C. A.; and for such other relief and equity that protestants should be entitled.

William McCraw, Attorney General of Texas. W. J. (Dick) Holt, Wm. C. Davis, T. F. Morrow, Assistants Attorney General. Ben Greenwood, Attorney for J. C. Clopton and Bullock Hyder.

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[fol. 65] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR RESCISSION OF ORDER

Now comes the State of Texas by and through William McCraw, duly elected, qualified and acting Attorney General of the State of Texas, and respectfully moves this Honorable Court to rescind so much of his order heretofore

entered in this cause on the 18th day of December, 1935, wherein it is ordered that the receivers appointed by the District Court of the 126th Judicial District of Texas, the attorneys and all other persons are restrained from prosecuting suits or attempting to take possession of the property of the debtor, and permit the Attorney General of the State of Texas to proceed in the District Court 126th Judicial District Travis County, Texas, in causes Numbers 56252 and 56474 without stay, let or hindrances, so that said causes may proceed to final judgment, looking to the establishment of the State's claims for taxes, fines and penalties as prayed for in said suits; and that the administration of the estate of the debtor by the trustees appointed by the Court in this proceeding be stayed during said period, and that upon the establishment of said claims for taxes, fines and penalties any judgment to that effect be certified to this Honorable Court for observance and classification looking to the satisfaction thereof.

And in this connection it is respectfully shown to the Court that under the Statutes of the State of Texas with respect to the recovering of taxes, fines and penalties imposed upon persons violating the conservation laws of the State of Texas, jurisdiction for the trial of such causes is [fol. 66] laid in Travis County, State of Texas, and that in a trial of the causes above referred to it is necessary that the permanent records of the Railroad Commission of Texas, the administrative agency whereby the conservation laws of the State of Texas are put into force and effect, will have to be removed to this Honorable Court if it should find that the establishment of the claim for taxes, fines and penalties should be heard by this Court or by a Master appointed by this Court. That the movement of such records will be a cumbersome procedure and will impose inconveniences upon all parties connected with said suits, and that the hearing of such claim for taxes, fines and penalties by this Court or by a Master appointed by this Court would be thoroughly impracticable, in addition to the fact that the State of Texas, under the laws of the State — entitled to a trial of said suits in its own forums as provided by law, and that the appointment of a Master by this Honorable Court to hear such suits or claims would deprive the State of its constitutional right to a trial by jury in such matters.

It is further represented in this connection that it is contemplated by the statutory laws of the State of Texas with reference to suits by the State of Texas seeking the recovery of taxes, fines and penalties for the violation of the conservation laws of the State of Texas be heard by Courts of competent jurisdiction, and that the same are to be heard according to the rules of law with respect to judicial trials and proceedings.

Wherefore, these movants pray that this Honorable Court enter its order rescinding that part of its order entered on the 18th day of December, 1935, in the respects above pointed out, and that the State be authorized to proceed in the prosecution of its suits in the District Court 126th Judicial District Travis County, Texas, or such other District Court in Travis County, Texas as conditions may [fol. 67] require; and that all proceedings looking to the approval of debtor's proposed plan be stayed pending the entry of a final judgment in said causes; and that a reasonable time be set in which said causes are to be heard and tried and reduced to judgment.

William McCraw, Attorney General. Pat M. Neff, Jr., T. F. Morrow, William C. Davis & W. J. Holt, Assistants Attorney Generals.

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IN UNITED STATES DISTRICT COURT

No. 1939

In the Matter of TRINITY REFINING COMPANY, a Corporation, Debtor

In Proceedings for Corporate Reorganization

JUDGMENT

On the 13th day of January, A. D. 1936, came on to be heard the matter of the petition of Trinity Refining Company, a corporation, petitioning for corporate reorganization under Section 77b of the Bankruptcy Act of 1898 as amended, in pursuance of the order of this Court heretofore entered on the 18th day of December, 1935, and the hearing was thereupon continued and passed over to the 14th day of January, 1936, at 3:00 o'clock in the afternoon,

at which time there appeared the Debtor by its officers and by counsel, David Donoghue, the Trustee heretofore appointed in this cause, in person and by counsel, and the [fol. 68] following creditors and parties at interest: Atlas Supply Company, Mosher Steel Company, General American Tank Car Company, Clark Bros. Engine Company, Oil Well Supply Company, J. B. Beaird Company, Hall Lumber Company, Collector of Internal Revenue, all by counsel, and the State of Texas by W. J. Holt, Pat M. Neff, Jr., T. F. Morrow and Wm. C. Davis, Assistant Attorneys General of the State of Texas, and J. C. Clopton and Bullock Hyder, receivers, in person and by their counsel.

Thereupon David Donoghue, Trustee heretofore appointed in this cause, presented evidence of the fact that notice had been given in the manner ordered by the Court on December 18th, 1935, to all persons, both creditors and stockholders.

Thereupon the State of Texas and J. C. Clopton and Bullock Hyder, by counsel, presented their plea to the jurisdiction of the Court and their motion to dismiss the petition heretofore filed by the Debtor in this cause, and the Court having heard and considered the same and having heard argument of counsel thereon, is of the opinion that the same should be in all things overruled and denied, and it is, therefore,

Ordered that the plea of the State of Texas and J. C. Clopton and Bullock Hyder to the jurisdiction of the Court and the Motion of the State of Texas and J. C. Clopton and Bullock Hyder to dismiss the petition of the Debtor heretofore filed in this cause be and the same is in all things overruled and denied; to which action of the Court the State of Texas and J. C. Clopton and Bullock Hyder, through their counsel, then and there in open Court excepted.

Thereupon David Donoghue, Trustee herein, presented to the Court a report as directed by the Court's order of [fol. 69] December 18th, 1935, and there was then considered the appointment of a permanent Trustee herein. The Court, having heard argument of counsel thereon, is of the opinion that the appointment of David Donoghue as Trustee of the estate of the above named Debtor should be made permanent, and it is, therefore,

Ordered that the appointment of David Donoghue as Trustee of the estate of the above named Debtor be and the said is hereby made permanent, and that the bond of the said Trustee in the sum of Ten Thousand ($10,000.00) Dollars, heretofore given by said Trustee for the faithful performance of his duties as Trustee and filed in these procedings, shall stand; that the order of this Court dated the 18th day of December, 1935, be and the same hereby is continued in full force and effect, and that the trustee be and hereby is authorized to administer the assets and conduct the business of Debtor's estate herein and to manage and operate the same and to receive and collect the issues and profits from the business and properties of the Debtor's estate, subject to the provisions of and with all the powers granted by the said order.

Whereupon the Debtor, by its counsel, presented the plan for reorganization, and there appeared Mosher Steel Company, the Collector of Internal Revenue, the State of Texas, J. C. Clopton, Bullock Hyder and Ben Greenwood and presented their opposition and objections to the approval of said plan. The Court, having heard the objections aforesaid and the argument of counsel thereon, is of the opinion that the objections should in all things be overruled and denied and the plan as proposed approved, and it is, therefore,

Ordered that the objectons filed by Mosher Steel Company, the Collector of Internal Revenue, the State of Texas, J. C. Clopton, Bullock Hyder and Ben Greenwood to the proposed plan of reorganization be and the same are hereby [fol. 70] in all things overruled and denied, and the plan of reorganization heretofore filed in this cause by the Debtor be in all things approved and confirmed, subject to such other and further orders as may be made by this Court with respect thereto; to which action of the Court in overruling the objections and approving the plan, Mosher Steel Company, the Collector of Internal Revenue, the State of Texas, J. C. Clopton, Bullock Hyder and Ben Greenwood in open Court excepted.

Thereupon came on to be heard the motion of the State of Texas, by and through William McCraw, its Attorney General, to rescind so much of the order of this Court entered on the 18th day of December, 1935, wherein it is ordered that the receivers appointed by the District Court

for the 126th Judicial District of Texas, the attorneys and all other persons are restrained from prosecuting suits or attempting to take possession of the property of the Debtor and asking that this Court permit the Attorney General of the State of Texas to proceed in the District Court for the 126th Judicial District of Texas, Travis County, Texas, in Causes No. 56252 and 56476 without stay, let or hindrance so that said causes may proceed to final judgment and that the State's claims for taxes, fines and penalties as prayed for in said suits be fixed and established in said state causes, and that all proceedings in this Court looking to the approved of the Debtor's proposed plan of reorganization be stayed pending the entry of said final judgments in said state causes. The Court, having considered said motion and having heard the evidence and argument of counsel thereon, is of the opinion that said motion should be overruled and denied, and it is, therefore,

Ordered that the motion of the State of Texas, by and through Wliliam McCraw, its Attorney General, to rescind [fol. 71] so much of the order of this Court entered on the 18th day of December, 1935, wherein it is ordered that the receivers appointed by the District Court for the 126th Judicial District of Texas, the attorneys and all other persons are restrained from prosecuting suits or attempting to take possession of the property of the Debtor and asking that this Court permit the Attorney General of the State of Texas to proceed in the District Court for the 126th Judicial District of Texas, Travis County, Texas, in Causes No. 56252 and No. 56476 without stay, let or hindrance so that said causes may proceed to final judgment and that the State's claims for taxes, fines and penalties as prayed for in said suits be fixed and established in said state causes, and that all proceedings in this Court looking to the approval of the Debtor's proposed plan of reorganization be stayed pending the entry of said final judgments in said state causes, be and the same is hereby in all things overruled and denied. It is further Ordered that Causes No. 56252 and No. 56476, pending in the 126th Judicial District Court of Travis County, Texas, be and the same are hereby in all things stayed and the further prosecution of said causes be and the same is hereby enjoined and restrained.

It is further Ordered that all persons, their attorneys, agents and servants, be and they are hereby, jointly and

severally, restrained and enjoined from continuing the prosecution of any pending suit and from filing and prosecuting any suit or suits or any cause of action upon any debt, claim or demand against the Debtor in any Court or tribunal other than the Court in which this petition for reorganization is pending, and that the injunction herein ordered be cumulative of and in addition to the injunction contained in the order of the Court dated the 18th day of December, 1935.

It is further Ordered that all creditors and claimants of [fol. 72] the Debtor shall file with the Trustee, within ten days from the date of this order, evidence of their claim, debt or demand, which claim shall state the amount of the debt or claim, the name and address of the creditor or claimant, the security, if any, claimed, to which shall be attached a copy of any contract or instrument evidencing such security, all duly verified, and that after the expiration of said ten-day period, no creditor or claimant shall participate in this proceeding except on order for good cause shown; but said ten-day period shall not apply to any claim asserted by the State of Texas to certain crude oil, or to the proceeds of the sale thereof, this day ordered to be sold by the Trustee.

It is further Ordered that the Honorable Glenn Smith, one of the Referees in Bankruptcy of this Court, be and he is hereby appointed Special Master to hear and determine the amount and validity of all of the claims, debts and demands asserted by creditors or other claimants herein, to determine the liens and priorities to which the same are entitled and to classify the same with respect to the plan of reorganization filed herein by the Debtor; and the said Special Master is hereby authorized and directed to hear evidence and argument of counsel upon said matters at such places and at such times as he may determine, with due respect to the convenience of the claimants and other parties at interest, and as the Court may from time to time direct, and that said Special Master shall promptly make and file his report with respect to said matters.

Dated at Fort Worth, Texas, this the 15th day of January, A. D. 1936.

(Signed) James C. Wilson, United States District Judge.

[fol. 73] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO CORRECT AND MODIFY JUDGMENT

Now comes the State of Texas, by and through William McCraw, Attorney General of Texas, and respectfully moves this Honorable Court to correct and modify its judgment and order and decree entered in this cause of date January 15, 1936, by this Honorable Court in the following particulars:

That said judgment provides on page two thereof and on page three thereof as follows, to-wit:

"Thereupon came on to be heard the motion of the State of Texas, by and through William McCraw, its Attorney General, to rescind so much of the order of this Court entered on the 18th day of December, 1935, wherein it is ordered that the receivers appointed by the District Court for the 126th Judicial District of Texas, the attorneys and all other persons are restrained from prosecuting suits or attempting to take possession of the property of the Debtor and asking that this Court permit the Attorney General of the State of Texas to proceed in the District Court for the 126th Judicial District of Texas, Travis County, Texas, in Causes No. 56252 and No. 56476 without stay, let or hindrance so that said causes may proceed to final judgment and that the State's claims for taxes, fines and penalties as prayed for in said suits be fixed and established in said state causes, and that all proceedings in this Court looking to the approval of the Debtor's proposed plan of re-[fol. 74] organization be stayed pending the entry of said final judgment in said state causes. The Court, having considered said motion and having heard the evidence and argument of counsel thereon, is of the opinion that said motion should be overruled and denied, and it is, therefore,

Ordered that the motion of the State of Texas, by and through William McCraw, its Attorney General, to rescind so much of the order of this Court entered on the 18th day of December, 1935, wherein it is ordered that the receivers appointed by the District Court for the 126th Judicial District of Texas, the attorneys and all other persons are restrained from prosecuting suits or attempting to take pos-

session of the property of the Debtor and asking that this Court permit the Attorney General of the State of Texas to proceed in the District Court for the 126th Judicial District of Texas, Travis County, Texas, in Causes Nos. 56252 and 56476 without stay, let or hindrance so that said causes may proceed to final judgment and that the State's claims for taxes, fines and penalties as prayed for in said suits be fixed and established in said state causes, and that all proceedings in this Court looking to the approval of the Debtor's proposed plan of reorganization be stayed pending the entry of said final judgments in said state causes, be and the same is hereby in all things overruled and denied. It is further ordered that Causes No. 56252 and No. 56476, pending in the 126th Judicial District Court of Travis County, Texas, be and the same are hereby in all things stayed and the further prosecution of said causes be and the same is hereby enjoined and restrained.

It is Further Ordered that all persons, their attorneys, agents and servants, be and they are hereby, jointly and severally, restrained and enjoined from continuing the prosecution of any pending suit and from filing and prose- [fol. 75] cuting any suit or suits or any cause of action upon any debt, claim or demand against the Debtor in any Court or tribunal other than the Court in which this petition for reorganization is pending, and that the injunction herein ordered be cumulative of and in addition to the injunction contained in the order of the Court dated the 18th day of December, 1935."

In this connection it is shown that in cause No. 56,252 in the 126th Judicial District Court, as is shown by the State's pleadings heretofore filed in this cause, the State of Texas asked penalties, jointly and severally, against V. E. Jackson, J. B. Sowell, T. W. Sowell, C. B. Sowell and Minor Pipe Line Company, together with the debtor in this cause, to-wit, Trinity Refining Company, a corporation; that none of the other defendants in said cause No. 56,252 are corporations; that the cause of action of the State of Texas in said cause is severable; that none of the other defendants, save and except Trinity Refining Company, a corporation, are parties to this cause of action, and cannot be parties to this cause of action; that the State of Texas cannot collect any such penalties that may have accrued against V. E. Jackson, J. B. Sowell, T. W. Sowell, C. B. Sowell and Minor

Pipe Line Company in cause No. 1939 in Proceedings for Corporate Reorganization; that the State of Texas can and will proceed against the defendants in cause No. 56,252 in the said State Court other than Trinity Refining Company to collect such penalties and fines as may be due the State by virtue of their several and joint infractions of the conservation laws of the State of Texas; that the State of Texas can dismiss the Trinity Refining Company and any cause of action the State of Texas has against the said Trinity Refining Company in the State Court from the proceeding known as cause No. 56,252 and file its claim for any such penalties and fines and interest in the instant cause, and proceed against the other defendants in said [fol. 76] cause; that the judgment in this cause as entered by this Honorable Court enjoins the prosecution of said cause of action and restrains the State of Texas from proceeding with its cause of action against the parties other than the Trinity Refining Company, debtor in this cause. That it is manifestly in error for this Honorable Court to enjoin the prosecution of the State's claim against other parties in cause No. 56,252 who are not parties to this cause of action, and if said order is not correct or modified the State is prohibited from pursuing its statutory remedy to collect fines and penalties for infractions of the conservation laws of the state against V. E. Jackson, J. B. Sowell, T. W. Sowell, C. B. Sowell and Minor Pipe Line Company, none of whom are parties to this cause.

Wherefore, it is respectfully prayed that the order of this Honorable Court be modified so as to permit the State of Texas to proceed with its cause of action in cause No. 56,252 in the 126th Judicial District Court against all parties defendant, if it so desires, other than the Trinity Refining Company, debtor in this cause; and that the State of Texas be permitted, if it so desires, to present its claim to this Honorable Court for any fines, penalties and interest that may be due the State of Texas by virtue of violations of the conservation laws of the State of Texas by Trinity Refining Company, debtor in this cause; and for such other and further relief as may be mete and proper by virtue of the premises.

William McCraw, Attorney General of Texas; W. J. (Dick) Holt, Assistant Attorney General, Attorneys for State of Texas.

[fol. 77] (Copy)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION

No. 1939

In the Matter of TRINITY REFINING COMPANY, a Corporation, Debtor

On this 22nd day of January, A. D. 1936, came on to be considered a motion of the State of Texas to modify the order entered by this Court in this cause on the 15th day of January, A. D. 1936, to permit the State of Texas, if it desired, to proceed with the prosecution of its cause of action in Cause No. 56,252, in the 126th Judicial District Court of Travis County, Texas, against the defendants, or any part of them, in said cause, other than the Trinity Refining Company, a corporation, debtor in this cause, and came the State of Texas, appearing through one of its Assistant Attorney Generals, and the debtor, appearing through W. B. Harrell, one of its counsel, and announced ready for trial, and the Court having heard the motion, the facts and argument of counsel is of the opinion that the Court's order of January 15, 1936, should be modified to permit the State of Texas to proceed with its cause of action in suit No. 56,252, styled State of Texas vs. V. E. Jackson, et al., in the 126th District Court of Travis County, Texas, against the defendants in said suit, save and except the Trinity Refining Company, debtor herein.

It is, Therefore, Ordered, Adjudged and Decreed that the application of the State of Texas to modify said judgment be and the same is hereby granted as hereinafter provided.

It is Further Ordered that the State of Texas, plaintiff in the above styled and numbered cause, be and it is hereby [fol. 78] granted leave to sever said cause in the 126th District Court and to prosecute the same to final judgment against all defendants, or any part of them, in said cause, other than Trinity Refining Company, a corporation, debtor herein.

It is Further Ordered that the order of this Court of January 15, 1936, insofar as the same pertains to said cause as it affects Trinity Refining Company, a corporation,

debtor herein, be and the same is hereby continued in full force and effect.

It is Further Ordered, Adjudged and Decreed that the jurisdiction of the cause of action in said State Court, insofar as the same affects the Trinity Refining Company, debtor herein, shall remain in this Court.

——, United States District Judge.

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IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR ORDER DISSOLVING INJUNCTIONS, ETC.

To the Honorable United States District Judge:

Now come the State of Texas, by and through William McCraw, its duly qualified and acting Attorney General, and J. C. Clopton and Bullock Hyder, Receivers, duly appointed and qualified and acting under and by virtue of the provisions of a certain order entered by the District [fol. 79] Court in and for the 126th Judicial District, Travis County, Texas, in certain suits there pending, wherein Debtor, among others, is a defendant in certain suits brought by and on behalf of the State of Texas against Debtor and others to recover taxes, fines and penalties for the production, sale or transportation of crude petroleum oil in violation of the conservation laws of the State of Texas, and certain laws providing for the collection of taxes upon the sale of crude petroleum oil products in said State, the amount of said taxes being more fully hereinafter set out; and respectfully represent and show to the Court as follows:

I

That heretofore, on the 12th day of October, 1935, the State of Texas, by and through William McCraw, the duly elected, qualified and acting Attorney General of the State of Texas, entered suit in the District Court in and for the 126th Judicial District, Travis County, Texas, seeking the enforcement and collection of certain fines, penalties and interest incurred by the Debtor and its stockholders, manager and agents as a result of numerous violations of the

conservation laws of the State of Texas. That the State of Texas, in seeking the enforcement and collection of such fines, penalties and interest, also asserted and is still asserting a statutory lien upon all of the property and estates of the Debtor and the foreclosure of such lien to secure the payment of said penalties in such State. It is prayed that the sum of $791,000.00 in fines, penalties, and interest be recovered of and from the Trinity Refining Company, Debtor, and J. B. Sowell, T. W. Sowell, C. B. Sowell, and V. E. Jackson, doing business as the Lone Star Refining Company; and that the statutory lien as provided for in Article 7065a, Section 7 R. C. S. of the State of Texas (Acts of 1933, 43rd Legislature, Page 75, Chapter 44, Section 7) [fol. 80] be foreclosed, and further that a Receiver be appointed to take over, hold and operate said property for the purpose of foreclosing such lien securing the payment of the alleged fines, penalties and interest. A copy of the State of Texas petition and trial amendment filed in said cause is attached hereto, marked "Exhibit A", and made a part thereof for all pertinent purposes.

That in response to the prayer of said State of Texas' petition, notice was duly served upon the Trinity Refining Company and the other named defendants, notifying said parties to come in on the — day of ——, A. D. 1935, and show cause why a receiver should not be appointed as prayed for, and why injunction should not issue; and upon the day appointed for such hearing, the parties defendant in said suit came not, but appeared by counsel. Said counsel stated substantially to the Court that there had been filed in the United States District Court in and for the Western District of Texas a petition for the removal of said cause then pending in the 126th Judicial District Court of Travis County, Texas, by Trinity Refining Company, J. B. Sowell, T. W. Sowell and C. B. Sowell, Minor Pipe Line Company and V. E. Jackson. The petition for removal alleged substantially that enforcement of the statutes of the State of Texas provides for the imposition of penalties for the violation of the conservation laws of the State of Texas, which statute and enforcement thereof was denying to the Trinity Refining Company, J. B. Sowell, T. W. Sowell, C. B. Sowell, Minor Pipe Line Company, and V. E. Jackson equal civil rights under the Constitution of the United States; and was denying to them the equal pro-

tection of the law. That by reason of the filing of the petition for removal, the State Court had no jurisdiction to proceed further in the above named suits.

Counsel for the Trinity Refining Company and other named parties, after making the above appearance and [fol. 81] statement to the State Court, retired from the Courtroom. Thereupon the Attorney General announced ready for trial and advised the Court that in his opinion the petition for removal was not well founded in law, and as a consequence, the mere filing of the petition could not under the matters asserted in said removal petition operate as a hindrance to the State's authority in prosecuting the State of Texas' suit to establish the State's claim for penalties and the foreclosure of the lien, and the appointment of receivers by reason of the alleged violations in the petition filed in said cause. The District Court, after considering the matter, directed the State's attorney to proceed with the hearing. In the course of said hearing the testimony of a number of the witnesses was received by the Court, establishing the facts as alleged in the State's petition to the effect that numerous violations had been committed by Trinity Refining Company, Debtor, and the other named parties against the conservation laws of the State of Texas. At the conclusion of the hearing of evidence and argument of counsel, the Court announced substantially that it was one of the most flagrant cases presented to him showing violations of the conservation laws of the State of Texas, and that the case made by the State of Texas amply warranted the appointment of the receivers to take charge of the properties of Trinity Refining Company, Debtor.

The Court accordingly on the 25th day of October, 1935, entered its order appointing J. C. Clopton and Bullock Hyder, Receivers, to take over all the properties, assets and estates of the Trinity Refining Company and of the other parties named. A copy of said order appointing said receivers is attached hereto, marked "Exhibit B" and made a part hereof for all pertinent purposes.

[fol. 82] Subsequent to the appointing of the Receivers by the State Court, the defendants in said cause procured the issuance of a notice out of the United States District Court in and for the Western District of Texas, sitting at San Antonio, notifying the Attorney General and other State

Officers to appear in the said Court on the — day of ——, 1935, and show cause why an injunction should not issue, restraining enforcement of the suit pending in the State Court. Upon the day set for the hearing on the show cause order, the State answered by filing a plea to the jurisdiction, asserting that the petitioners for removal were not afforded the privilege of removal under Section 74, U. S. C. A., and the Hon. R. C. McMillan, United States District Judge, after hearing both sides announced that in his opinion the position for removal was not well founded, and that unless counsel for the petitioners could at a subsequent date convince him to the contrary, he would enter an order remanding the cause to the State District Court. On the — day of ——, 1935, the petitioners for removal joined in a motion addressed to the United States District Judge, moving for remand of the cause attempting to be removed from the State Court. The Court, after considering the motion, entered its order remanding the cause to the State District Court, a copy of which petition for removal, a copy of the joint motion to remand, and a copy of the order remanding said cause are attached hereto and marked "Exhibit 'C', 'D', and 'E'," respectively.

That after the remand of said cause, said Receivers immediately qualified by giving a required bond and took charge of the properties and estates, and were in charge of said property and estates of the Trinity Refining Company, Debtor, and other named parties until summarily dispossessed by David Donoghue, Trustee, appointed by order of this Honorable Court.

[fol. 83] II

That on December 14, 1935, the State of Texas filed a suit by verified petition in the District Court for the 98th Judicial District of Travis County, Texas, in Cause No. 56,472, against Trinity Refining Company, Debtor, V. E. Jackson, J. B. Sowell, C. B. Sowell and Minor Pipe Line Company, pursuant to the provisions of H. B. 247, passed by the 43rd Legislature of the State of Texas, as amended by H. B. 749, Acts of the 44th Legislature of the State of Texas, seeking the recovery of certain taxes, penalties and interests by reason of the operations of the properties of Trinity Refining Company, Debtor, and the other named parties, in the amount of $104,084.47. Said taxes were in-

curred by reason of the activities of said parties in refining, manufacturing, producing, blending, and compounding motor fuel and by making the first sale, distribution and use of the motor fuel within the State of Texas, and by reason of the activities of such parties, a tax of four cents per gallon of gasoline sold by said parties was incurred. The State in that suit was also seeking the foreclosure of the lien, which by the statutory law of the State is made a first and prior lien to any and all other existing lien upon the properties of any distributor of motor fuel, as defined by law. That upon the filing of said petition application was made to the District Court for the appointment of a receiver. The Judge of said Court however, declined at that time to appoint receivers to take charge of the properties and estates of the Trinity Refining Company, Debtor, and other named parties, for the reason that the receivers appointed by the District Court for the 126th Judicial District Court, Travis County, Texas, were then in possession of the properties and estates as a result of the filing of the suit of the State of Texas against Trinity Refining Company, a corporation, V. E. Jackson, J. B. Sowell, T. W. Sowell, C. B. Sowell, and Minor Pipe Line Company in [fol. 84] the District Court of the 126th Judicial District of Travis County, Texas.

That on the 8th day of January, 1936, it appearing to the Judge of the District Court for the 126th Judicial District, Travis County, Texas, upon motion that there was on file in said Court Cause No. 56,476, wherein the State of Texas was plaintiff, V. E. Jackson, Trinity Refining Company, J. B. Sowell, T. W. Sowell, C. B. Sowell, and Minor Pipe Line Company were defendants, same being the suit originally filed in the District Court of the 98th Judicial District, Travis County, Texas, wherein the State of Texas was seeking recovery of taxes, penalties, and interest against Trinity Refining Company, Debtor, and other named parties; and the Court after considering the motion of the State of Texas, entered an order appointing J. C. Clopton and Bullock Hyder Receivers of the properties and estates of Trinity Refining Company and other named parties as originally appointed in Cause No. 56,476, and further adjudged and decreed that no additional bond should be given by said Receivers, and that the bond originally given by them in Cause No.

56,252, should be adequate. A copy of said order is attached hereto, marked "Exhibit F" and referred to and made a part hereof for all pertinent purposes. That by reason of the above proceedings in the District Court of the 126th Judicial District of Travis County, Texas, and by reason of the filing of the suit by the State of Texas for the collection of taxes, fines, penalties and interests against Trinity Refining Company, V. E. Jackson, J. B. Sowell, T. W. Sowell, C. B. Sowell, and Minot Pipe Line Company, and the asserting of a statutory lien, and the prayer for foreclosure thereof upon the properties and estates of said Debtor and other named parties, and the subsequent appointing of Receivers and taking over of the properties [fol. 85] and estates by the Receivers so appointed, the properties and estates of the Debtor are now in the exclusive jurisdiction of the Court of the State of Texas, and the existence of a valid statutory lien, and the prayer for foreclosure thereof, deprives this Honorable Court of jurisdiction to enter any order summarily or otherwise compelling the State Court Receivers to turn said properties and estates of the Debtor in the Receivers' possession over to David Donaghue, Trustee, appointed by this Court.

III

It is further shown to the Court that in Cause No. 56,476 and Cause No. 56,252, styled State of Texas vs. V. E. Jackson, Trinity Refining Company, and others in the District Court, 126th Judicial District, Travis County, Texas, there was filed on the 18th day of February, A. D. 1936, a motion by Bullock Hyder and J. C. Clopton, Receivers in said causes, whereby said Receivers moved the Judge of said Court to enter an order authorizing them to institute appropriate proceedings in this Court in the matter of Trinity Refining Company, a corporation, Debtor, No. 1939, in proceedings for corporate reorganization, with a view of reobtaining possession by said Receivers of the properties and estates of the Trinity Refining Company, originally held by them, pursuant to the orders of the District Court as above set out, and which properties and estates were summarily taken over from them by David Donoghue, Trustee, appointed by this Honorable Court in No. 1939, in proceeding for corporate reorganization of Trinity Refining Company. Receivers also moved the State Court

to enter an order authorizing them to institute appropriate proceedings in this Court looking to the dissolution of an injunction issuing out of this Court and directed against said Receivers, from interfering with David Donoghue, Trustee, appointed by this Court, in the possession by him [fol. 86] of the properties and estates of Trinity Refining Company, a corporation, Debtor.

That on the 18th day of February, 1936, the Hon. W. F. Robertson, Judge of the 126th Judicial District Court, Travis County, Texas, in said cause, entered his order directing Bullock Hyder and J. C. Clopton, Receivers in said causes, to institute appropriate proceedings in this Court looking to the return of the properties and estates of the Trinity Refining Company to them by this Honorable Court, and also looking to the dissolution of the injunction issuing out of this Court directed against them from interfering with David Donoghue, Trustee; a copy of said motion and a copy of said order are attached hereto and marked "Exhibit 'G' and 'H'" and made a part hereof for all pertinent purposes.

IV

Pursuant to the above order, J. C. Clopton and Bullock Hyder, Receivers, here and now respectfully move this Honorable Court to enter its order dissolving the injunction heretofore directed against them from interfering with David Donoghue, Trustee, appointed by this Court; and further to enter an order directing David Donoghue, Trustee, as aforesaid, to turn over to these Receivers the properties and estates of the Trinity Refining Company to them, said properties and estate being originally held by them under orders of the District Court, 126th Judicial District, Travis County, Texas, for the following reasons and grounds, to-wit:

These Receivers assigned first all of the facts and circumstances heretofore alleged in this motion respecting the bringing of the suits against Trinity Refining Company and other named parties, and the entry of the orders by the State District Judge in said causes appointing them [fol. 87] as Receivers to take over, hold and preserve the properties and estates of the Trinity Refining Company pending the foreclosure of the statutory liens asserted in said causes of action.

These Receivers would further show that the suits brought on behalf of the State of Texas by and through its Attorney General were not suits brought looking to the establishment of an "Equity Receivership" as contemplated under (Section 77-B (i), U. S. C. A., Title 11, Section 207 (i) Amendatory to the Bankruptcy Act of 1898) but on the contrary, the suits in the State Courts being for the recovery of taxes, fines and penalties and the foreclosure of the statutory liens in favor of the State of Texas, securing the payment of said taxes, fines and penalties due the State of Texas.

In further support of Receivers motion for a dissolution of injunction, and a return of the properties and estates of the Debtor to them, these Receivers would show that this Court was without authority of law to enter the injunction against them, or to enter the order whereby the properties and estates of the Trinity Refining Company, Debtor, were summarily taken from them by David Donaghue, Trustee, in that in the petition for reorganization filed in this cause by Trinity Refining Company, Debtor, it is alleged in paragraph six thereof that:

"The Debtor is not insolvent but is unable to meet its debts as they mature, and desires to effect a plan of reorganization as provided in Section 77-B of the Act of Congress amendatory to the Bankruptcy Act of 1898 (Sec. 207, Title 11, U. S. C. A.)"

In addition to the above it is alleged in said petition for reorganization under paragraph 8 that:

"The Debtor would show that its debts as set out in paragraph four of this petition are now due and past due, [fol. 88] and as shown by said paragraph four it does not now have funds on hand sufficient to discharge such indebtedness. The Debtor respectfully shows to the Court that in the State Receivership proceeding, hereinbefore mentioned, no plan for the reorganization of the Debtor has been proposed, and none is contemplated, nor has any effort been made in such receivership to discharge the debts and obligations of the Debtor, nor has any method been devised or proposed for such purpose,"

That in addition to the above it is recognized by Debtor under paragraph eight of said petition that the State of

Texas has and is asserting a lien to secure the payment of the gasoline taxes.

V.

Accordingly it is shown that the issuance of the injunction by this Court against Receivers and the summary order issued out of this Court directing David Donoghue, Trustee, to take over the properties and estates of Trinity Refining Company, one of the defendants in the causes above set out, and in which the foreclosure of the statutory liens securing the payment of such taxes, fines and penalties is prayed for, this Honorable Court was not authorized to enter any injunction or enter any summary order directed against these Receivers, under Section 77-B of the Bankruptcy Act of 1898, as amended.

Wherefore it is prayed that this Honorable Court entertain this motion and enter its order dissolving the injunctions heretofore issued against these Receivers from interfering with the possession by David Donoghue, Trustee, appointed by this Court and to enter its order directing said David Donoghue, Trustee, to turn over to these Re-
[fol. 89] ceivers the properties and estates of the Trinity Refining Company, Debtor.

William McCraw, Attorney General of Texas. W. J. (Dick) Holt, William C. Davis, C. M. Kennedy, Joe Sharp, Assistants Attorney General. Ben Greenwood, Attorney for J. C. Clopton and Bullock Hyder, Receivers.

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IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF DEBTOR TO DISMISS MOTION OF THE STATE OF TEXAS AND OF J. C. CLOPTON AND BULLOCK HYDER, RECEIVERS, FOR AN ORDER DISSOLVING THE INJUNCTION HERETOFORE ISSUED, ETC.

To the Hon. James C. Wilson, Judge of said Court:

Comes now Trinity Refining Company, a corporation, Debtor in the above entitled and numbered cause, and files

[fol. 90] this, its motion to dismiss the motion of the State of Texas and of J. C. Clopton and Bullock Hyder, Receivers, for an order of the Court dissolving the injunction heretofore issued against the Receivers, and for an order directing David Donoguhe, Trustee, to turn over to said Receivers the properties and estates of Trinity Refining Company, and respectfully shows to the Court:

1

That heretofore on the 13th day of January, 1936, the State of Texas, by and through its Attorney-General, William McCraw, and J. C. Clopton and Bullock Hyder, Receivers in Cause No. 56252 in the 126th Judicial District Court of Travis County, Texas, filed their motion to dismiss the petition for corporate reorganization of the Debtor, and for an order directing David Donoghue, Trustee herein, to deliver the properties and estates of the Debtor into the hands of J. C. Clopton and Bullock Hyder, Receivers in the State Court, and on said 13th day of January, 1936, such motion was heard by this Honorable Court, and in said motion and at said hearing the State of Texas and the Receivers presented and urged to the Court the same matters and things as they now urge in their motion for an order dissolving the injunction against the Receivers and for an order directing the Trustee to turn over the properties and estates of the Debtor to said Receivers; and on the 13th day of January, 1936, the Court, after such hearing, in all things overruled and denied the motion of the State and of said Receivers. That the order of the Court on January 13th, 1936, overruling and denying such motion, from which neither the State nor said Receivers have appealed, is an effective bar against the State and said Receivers further urging the matters and things therein disposed of and the present motion, and said State and said Receivers are not now entitled to have their present motion [fol. 91] considered by the Court, but that such motion should be by the Court in all things dismissed.

2

The said J. C. Clopton and Bullock Hyder, who are styled as Receivers appointed in the State Court, as set out in paragraph 1 hereof, are wholly without authority to have the custody of the properties and estates of the Debtor, and

are not entitled to be heard to say in this Honorable Court that they are Receivers of the properties of the Debtor, because it affirmatively appears from the pleadings of the State in said suit and the order of the Court purporting to appoint said Clopton and Hyder as Receivers therein that their appointment is void, for that the State of Texas was not a creditor of the Debtor, nor were the properties of the Debtor a fund out of which the State's alleged debt was entitled to be paid.

Wherefore, the Debtor prays that said motion be in all things dismissed.

——— ———, ——— ———, Attorneys for the Debtor.

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION

No. 1939

In the Matter of TRINITY REFINING COMPANY, a Corporation, Debtor

In Proceedings for Corporate Reorganization

On the 30th day of March, 1936, came on to be heard the motion of the State of Texas, through its Attorney Gen- [fol. 92] eral, and J. C. Clopton and Bullock Hyder, Receivers, asking the Court to entertain their said motion and enter its order dissolving the injunctions heretofore issued out of this Court against said Receivers from interfering with the possession of David Donoghue, Trustee herein, and to direct said David Donoghue, Trustee, to turn over to said Receivers the properties and estates of Trinity Refining Company, Debtor. And at the same time, the Debtor presented its motion to dismiss said motion of the State of Texas and said J. C. Clopton and Bullock Hyder, Receivers, for the reason that said State of Texas and said Receivers had heretofore filed in this Court a motion covering the same matters and things contained in the motion now before the Court, and said State of Texas and said Receivers had on the 14th day of January, 1936, presented said motion to the Court, with their evidence and argument thereon, and that the Court did by order dated the 15th day of January, 1936, overrule and deny said motion, and said

Debtor prayed that said motion of the State of Texas and said Receivers be in all things dismissed; and having heard the evidence and argument on said motion of the Debtor to dismiss, the Court finds that the same matters and things presented in the motion of the State of Texas and said Receivers presented on March 30th, 1936, and now before the Court, were presented to the Court by said State of Texas and said Receivers and were heard by the Court on January 14th, 1936, and were by order of the Court dated the 15th day of January, 1936, overruled and denied; and the Court further finds that the motion of the State of Texas and said Receivers presented on the 30th day of March, 1936, and now before the Court, presents no matter other than was presented by the State of Texas and said Receivers on the 14th day of January, 1936, and heard and disposed of by order of the Court dated the 15th day of January, 1936, and that Debtor's motion to dismiss should be granted.

[fol. 93] It is, Therefore, Ordered, Adjudged and Decreed that the motion of the Debtor to dismiss the motion of the State of Texas and of J. C. Clopton and Bullock Hyder, Receivers, wherein the State of Texas and J. C. Clopton and Bullock Hyder, Receivers, request an order dissolving the injunction heretofore issued out of this Court against the Receivers from interfering with the possession of David Donoghue, Trustee herein, and request an order directing David Donoghue, Trustee, to turn over to said Receivers the properties and estates of Trinity Refining Company, Debtor herein, be and the same is hereby in all things granted.

It is Further Ordered that the motion of the State of Texas and of J. C. Clopton and Bullock Hyder, Receivers, wherein the State of Texas and J. C. Clopton and Bullock Hyder, Receivers, request an order dissolving the injunction heretofore issued out of this Court against the Receivers from interfering with the possession of David Donoghue, Trustee herein, and request an order directing David Donoghue, Trustee, to turn over to said Receivers the properties and estates of Trinity Refining Company, Debtor herein, be and the same is hereby in all things dismissed.

To all of which action of the Court, the State of Texas and J. C. Clopton and Bullock Hyder, Receivers, then and there in open Court duly excepted and then and there in

open Court gave notice of appeal to the United States Circuit Court of Appeals for the Fifth Circuit, at New Orleans.

Dated and entered this the — day of May, 1936.

——— ———, United States District Judge.

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[fol. 94] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO THE MOTION OF THE STATE OF TEXAS AND OF J. C. CLOPTON AND BULLOCK HYDER, RECEIVERS, FOR AN ORDER DISSOLVING THE INJUNCTION HERETOFORE ISSUED AGAINST THE RECEIVERS, ETC.

To the Hon. James C. Wilson, Judge of said Court:

Comes now Trinity Refining Company, a corporation, Debtor in the above entitled and numbered cause, and in answer to the motion of the State of Texas and of J. C. Clopton and Bullock Hyder, Receivers, for an order dissolving the injunction heretofore issued against the Receivers from interfering with the possession of David Donoghue, Trustee, and for an order directing David Donoghue, Trustee, to turn over to said Receivers the properties and estates of Trinity Refining Company, Debtor, respectfully shows to the Court:

1

It affirmatively appears from the face of the aforesaid motion that at the time of the institution of this proceed-[fol. 95] ings for corporate reorganization there was pending against the Debtor, and others in the District Court of Travis County, in the 126th Judicial District of Texas, an equity receivership.

2

That on the 18th day of December, 1935, at the time of the institution by the Debtor of this proceedings for corporate reorganization, and at the time of the appointment of the Trustee herein, none of the properties of the Debtor were in the custody of any other Court or the receiver or officer of any other Court in any proceeding ancillary or incidental to the enforcement by the State of Texas or any other person of any valid specific lien.

3

The Debtor would show that it affirmatively appears from the pleadings in the case pending in the 126th Judicial District Court of Travis County, Texas, in which case J. C. Clopton and Bullock Hyder were acting as Receivers of the properties of the Debtor on the said 18th day of December, 1935, that the claim asserted therein by the State of Texas against the Debtor, and the other defendants in said suit, was for an unliquidated demand, which upon hearing might and could have been determined to have been nothing or one dollar or any number of dollars up to and including $791,000.00, the amount sued for, and that at the time of the institution of this proceedings for corporate reorganization and at the time of the appointment of the Trustee and at the time of the taking over by said Trustee of the properties of the Debtor, there had been no finding or determination in said State Court of any sum whatsoever which the Debtor owed the State of Texas.

[fol. 96] The Debtor further alleges that it affirmatively appears from the State's petition in said state case that the receivership was applied for by the State in said state case solely to wrest out of the hands of the defendants in said state case the means of violating the conservation laws of the State of Texas and to prevent violations by the defendants of such laws and as a punishment for alleged prior violation of the conservation laws; and that it affirmatively appears from the face of the State's pleadings in said state case that the State was not in such case asserting against the properties of the Debtor any valid specific lien.

4

It affirmatively appears from the face of the State's motion that the Receivers appointed by the State Court were appointed within less than four months from the date of the institution of this proceedings for corporate reorganization.

5

The said J. C. Clopton and Bullock Hyder, who are styled as Receivers appointed in the State Court, as set out in paragraph 3 hereof, are wholly without authority to have the custody of the properties and estates of the Debtor, and are not entitled to be heard here to say in this Honorable Court that they are Receivers of the properties of the

Debtor, because it affirmatively appears from the pleadings of the State in said suit and the order of the Court purporting to appoint said Clopton and Hyder as Receivers therein that their appointment is void, for that the State of Texas was not a creditor of the Debtor, nor were the properties of the Debtor a fund out of which the State's alleged debt was entitled to be paid.

[fol. 97] 6

The Debtor denies that this Honorable Court was without jurisdiction to entertain its petition for corporate reorganization at the time the same was filed or to appoint the Trustee, but the Debtor says on the other hand that under the provisions of Section 77-b of the Bankruptcy Act of 1898 as amended, this Court had full power and authority to and rightfully did entertain its petition for corporate reorganization, permit the same to be filed, and appointed the Trustee herein.

Wherefore, the Debtor prays that the motion of the State of Texas and of the Receivers, J. C. Clopton and Bullock Hyder, be in all things denied and that this corporate reorganization proceeding go forward as provided by law.

——— ———, ——— ———, Attorneys for the Debtor.

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IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS RESTRAINING ORDERS, ETC.

To the Honorable James C. Wilson, Judge of said Court:

Now comes the State of Texas, acting by and through William McCraw, the duly elected, qualified and acting Attorney General of the State of Texas, and respectfully moves the Court to dismiss its restraining orders in injunctive proceedings issued against the State of Texas and [fol. 98] its officers and administrative agencies in this Court for the following good and sufficient reasons:

I

That the injunction whereby this Court has restrained the State of Texas, acting through its duly constituted

officers, from prosecuting certain suits in the Courts of the State of Texas, seeking the recovery of taxes, fines and penalties, and seeking the recovery of penalties from the Debtor herein and others for violations by them of the conservation laws of the State of Texas is in truth and in fact and is essentially a suit against the State of Texas, inhibited by the Eleventh Amendment to the Constitution of the United States.

Wherefore, the State of Texas, through its Attorney General, prays that all the injunctive processes issuing out of this Court, restraining the officers of the State of Texas from prosecuting said suit, be in all things set aside and dissolved.

William McCraw, Attorney General of Texas. William C. Davis, C. M. Kennedy, W. J. (Dick) Holt, (Joe Sharp,) Assistants Attorney General.

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION.

No. 1939

In the Matter of TRINITY REFINING COMPANY, a Corporation, Debtor

In Proceedings for Corporate Reorganization

On the 30th day of March, 1936, came on for hearing the motion of the State of Texas, acting by and through Wil- [fol. 99] liam McCraw, its Attorney General, praying that all of the injunctive processes issuing out of this Court restraining the officers of the State of Texas from prosecuting certain suits in the Courts of the State of Texas seeking the recovery of taxes, fines and penalties and seeking the recovery of penalties from the Debtor herein and others, be in all things set aside and dissolved; and after hearing said motion and the evidence and arguments thereon, the Court finds that the same should be granted.

It Is, Therefore, Ordered, Adjudged And Decreed that all injunctions, heretofore issued in this cause against the State of Texas and its officers and administrative agencies, restraining and enjoining them from prosecuting causes No. 56252 pending in the 126th Judicial District Court of

Travis County, Texas, styled The State of Texas vs. V. E. Jackson, et al., and being a suit seeking the recovery of statutory penalties for alleged violations of the conservation laws of the State of Texas, and restraining the State of Texas, its officers and administrative agencies, from prosecuting cause No. 56476 pending in the 126th Judicial District Court of Travis County, Texas, styled The State of Texas vs. V. E. Jackson, et al., seeking the recovery of taxes, fines and penalties, be and the same are hereby in all things set aside and dissolved,

Dated and entered this the — day of May, 1936.

— ——, United States District Judge.

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[fol. 100] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED MOTION OF THE STATE OF TEXAS FOR PERMISSION TO PROCEED IN CONFISCATION PROCEEDINGS AGAINST 69,900 BARRELS OF OIL, NOW IN POSSESSION OF DAVID DONOGHUE, TRUSTEE

To the Honorable James C. Wilson, Judge of said Court:

Now comes the State of Texas, acting by and through William McCraw, the duly elected, qualified and acting Attorney General of the State of Texas, and without waiving any of the pleas to the jurisdiction heretofore filed in this cause, and after obtaining leave, files this amended motion, and would show to the Court as follows, to-wit:

I

That heretofore on the 13th day of February, A. D. 1936, this Honorable Court on the motion of David Donoghue, Trustee of the Trinity Refining Company, a corporation, ordered sold the hereinafter described oil, and ordered the proceeds thereof to be held pending the determination of the claims of the various parties, including the State of Texas. The particular oil concerning which said order was entered is described as follows, to-wit:

Being 69,000 barrels more or less of weathered and/or topped crude of a gravity of approximately 24 gravity, and

[fol. 101] being situated in what is known as the Farris earthen pit in the Augustine Survey in Upshur County, Texas.

It is further shown that it appears from the petition for corporate reorganization of Trinity Refining Company, debtor in this cause, and from the books and records in the custody of the agents of the Railroad Commission of Texas that Trinity Refining Company, debtor, now has on hand, and to which it claims title in this proceeding, approximately 40,000 barrels of fuel oil, located and described as consisting of:

Approximately 5,000 barrels, more or less, in steel storage tank No. 5 on the Phillips lease, Block 77, M. Dillard Survey, Gregg County, Texas; and

Approximately 10,000 barrels of fuel oil, more or less, in Tank No. 10, on the Callum lease in the Rhodes Survey, Gregg County, Texas; and

Approximately 25,000 barrels of oil in Tank No. 25, on the Callum lease, Rhodes Survey, Gregg County, Texas.

Also about 37,500 barrels of fuel oil located in Tank 37 on the Hanbury lease in the Hokit Survey in Gregg County, Texas.

That said crude petroleum oil and crude petroleum products above described are illegal and unlawful oil as defined by the statutes of the State of Texas and the rules and regulations of the Railroad Commission of Texas, as will more fully hereinafter appear.

II

That House Bill 581, Acts of the 44th Legislature of the State of Texas, effective May 11, 1935, provides that all [fol. 102] unlawful oil and unlawful products of oil as defined by said bill are thereby declared to be a nuisance and shall be forfeited to the State of Texas as therein provided. Said Bill further provides that the Attorney General, when advised from any source of the presence and existence of unlawful oil and/or unlawful products of oil, shall immediately institute a suit in rem against such unlawful oil and/or unlawful products of oil and against all persons owning, claiming or in possession thereof, such suit to be brought in the name of the State of Texas in any Court of competent jurisdiction in Travis County, Texas, or in the county in which such oil or product is

located. That said Act defines unlawful oil to be and to include oil which has been produced within the State of Texas from any well or wells in excess of the amount allowed by any order of the Commission and oil which has been produced within said State in violation of any law of said State or in violation of any order of the Commission, and shall include any oil transported in violation of any such law or in violation of any such order.

III

That said Act defines unlawful product to be any product derived from refined crude oil, any part of which was processed or derived in whole or in part from unlawful oil or from any product of unlawful oil, or from unlawful gas, or which is transported in violation of any order of the Commission or in violation of the laws of the State of Texas.

IV

That at all times since September 29, 1932, the Railroad Commission of the State of Texas has had in force and effect pursuant to authority vested in it by the Legislature of the State of Texas, valid orders regulating and pro- [fol. 103] rating the allowable production of crude petroleum oil for each and every well in the East Texas field located in the counties of Rusk, Gregg, Upshur, Smith and Cherokee. That at all times since August 12, 1931, the statutes of Texas have prohibited the purchasing, transportation or handling of crude petroleum oil produced in whole or in part in excess of the amount allowed by statute or by any rule, regulation or order of the Railroad Commission of Texas. That at all times since September 29, 1932, the Railroad Commission of Texas has had in force valid rules, regulations and orders to make more effective such statutes, including requirement for securing approved tenders or certificates of clearance or other paper before transporting crude petroleum oil. That at all times since April 13, 1935, the statutes of Texas prohibited the transportation or handling in any other way of any product of crude petroleum oil, as such product was defined by law, in violation of any oil or gas conservation statute of this State or of any rule, regulation or order of the Railroad Commission of Texas promulgated thereunder.

V

That under the laws of the State of Texas and particularly Title 102 of the Revised Civil Statutes of Texas, 1925, and all amendments thereto, the Railroad Commission of Texas is charged with the duty of issuing, promulgating and enforcing orders, rules and regulations to prevent the waste of crude petroleum within the State of Texas. That waste of such natural resource is defined by said law and is prohibited. That under said law said Railroad Commission of Texas is authorized to fix and establish from time to time the quantity of oil which may be lawfully produced by any person owning a well producing crude oil and/or natural gas within the State of Texas. Pursuant to such [fol. 104] authority and after due notice and hearing in the manner prescribed by said laws, the Railroad Commission of Texas have from time to time by various orders, rules and regulations entered on its oil and gas dockets fixing the amount of oil which each such well from time to time is permitted to produce. That oil produced in accordance with and in obedience to such laws, rules, regulations and orders of the Railroad Commission of Texas is generally known as "allowable oil" and oil produced from any well in excess of such allowable oil is commonly known as "excess oil" or "hot oil" or "unlawful oil".

VI

That each such order and rule and regulation promulgated by the Railroad Commission of Texas, and the amount of allowable production fixed for each well has been made known to the operator of each such well, and the operator of every well is charged with knowledge of all such orders, rules and regulations and allowables for his well as fixed from time to time. That pursuant to said authority the Railroad Commission of Texas has published an allowable schedule from time to time containing the allowables fixed from time to time for all of the wells in the East Texas Field, including the wells owned by the defendants hereinafter more fully described, a copy of which allowable schedule is kept in the Railroad Commission office at Kilgore, Texas, where all of the Commission's books, records and administrative affairs as they pertain to said East Texas Field are kept. That such allowable schedule and

all other such books and records are kept open to the public, and they are placed at the disposal of each of the owners of oil wells and operators in said field as a source of information to them of the amount of allowable oil as fixed by said rules and regulations. That all operators of oil wells in said field are charged with knowledge of the contents of said orders, and of said allowables, and of said [fol. 105] allowable schedule; and as to each of such orders and allowable schedules affecting the properties belonging to the debtor hereinafter fully described, said debtor and each of them had not only constructive knowledge hereinbefore set out but likewise actual knowledge thereof.

VII

That pursuant to Title 102 of the Revised Civil Statutes of the State of Texas, 1925, and amendments thereby by the Legislature of the State of Texas, the Railroad Commission of Texas by authority of law took the potential hourly producing capacity of each producing oil well in the field, known as the East Texas Field, by means of what is known as a contour map after actually making gauges of the producing capacity of key wells in said field. That the Railroad Commission published what is known as a proration schedule based upon the potential production survey of said field and filed in its office in Austin and in each district office in the State of Texas, and particularly the Kilgore office having supervision of the East Texas field, a proration schedule subject to view and inspection of any interested party and in addition thereto by mail did widely circulate the percentage allowed to be produced from each well in the East Texas field so that all parties could be and were advised of the rule, regulation and order of the Railroad Commission of Texas, permitting and allowing production of oil of each well in the East Texas Field. That the applicable rules, regulations and orders of the Railroad Commission, all of which are valid and subsisting, are as follows:

VIII

That the Attorney General of Texas has been advised that all of the above described oil and oil products is unlawful oil or that same is unlawful products of crude petro- [fol. 106] leum oil, in that said oil and products have been

transported in violation of the valid rules and regulations of the Railroad Commission, and were produced in violation of said rules and regulations in that the crude petroleum oil above described has been produced in excess of the allowable granted to each well, from which said oil was produced, and that all of the products above described have been transported without duly approved tenders from the Railroad Commission.

IX

It is shown that the Railroad Commission of Texas through orders duly promulgated and effective at all times herein mentioned, have set up a system of records, abstracting and accounting for all legal and allowable oil produced in the East Texas Oil Field, in its office at Kilgore, Texas. It is alleged that the oil in question was produced in the East Texas Oil Field, but that the wells from which the same was produced is unknown to the agents of the State of Texas and peculiarly within the knowledge of the adverse parties to this litigation. That allowable oil produced in accordance with the rules, regulations and orders of the Railroad Commission, promulgated by virtue of the statutory laws of Texas, is identified by number and record in the office of the Railroad Commission of Texas at Kilgore, accounting for all oil produced in the East Texas Oil Field. That the oil hereinabove described was not produced in accordance with the orders of the Commission and the laws of the State of Texas, and no record of its production as allowable oil exists in the office of the Railroad Commission of Texas. That oil such as described in this motion is known as excess or unallowable, or unlawful oil; and that the oil hereinbefore described is excess, unallowable, and unlawful oil.

[fol. 107] X

The State of Texas here alleged that said oil was transported in violation of the rules and regulations of the Railroad Commission of Texas, prior to the time that it was placed in said pit where it is now located and prior to the time that the Trustee, David Donoghue, came into possession of said oil. That said oil was not produced in accordance with the valid rules and regulations of the Railroad Commission, but the Attorney General of the State of

Texas is advised that said oil was produced in excess of the valid rules and regulations of the Railroad Commission. That by virtue thereof, said oil is unlawful oil and unlawful products of oil.

XI

That by virtue of the premises, said oil is subject to confiscation by the State of Texas in an action brought by way of a suit in rem against the oil. That under the statutes of the State of Texas, the State could not proceed against the proceeds of said oil after same has been sold, but must proceed in accordance with House Bill 581, which provides that said suit shall be brought in rem against said oil. And that for the further reason that it is not within the competency of the Courts of the United States, sitting in bankruptcy to entertain a proceeding in the nature of a suit on behalf of the State of Texas seeking to confiscate unlawful crude petroleum oil and unlawful crude petroleum products, as defined by the laws of the State of Texas. For the further reason that such suit as is contemplated by H. B. 581 above referred to is in the nature of a suit in rem; and that such suit looking to the confiscation of such oil and oil products can only be brought in a State Court of competent jurisdiction in Travis County, Texas; and that any rule or order of this Court requiring [fol. 108] the State through its duly constituted officers to maintain a suit in rem in this Court sitting in bankruptcy, or to maintain a suit looking to the collection of the proceeds brought after a sale by this Court by such unlawful oil and unlawful products in this Court, would amount to a suspension by this Court sitting in bankruptcy of a valid penal statute of the State of Texas and the valid rules and regulations of the Railroad Commission looking to the conservation of the natural resources of the State of Texas.

XII

That if this oil is sold, the State will lose its right to adjudicate its title and interest in and to said oil.

XIII

That this Court, in its order of the 13th day of February, 1936, wherein said oil is ordered sold, so states in the order

that it appears to this Honorable Court that by selling said oil the interests of all claimants, including the State of Texas, will be conserved and promoted pending a determination of the claims of the various claimants, including the State of Texas. That The Court at that time thereby recognized that the State of Texas had a claim in and to said oil.

Wherefore, by virtue of the premises, plaintiff, State of Texas, prays permission of this Honorable Court to file suit in the District Court of Travis County, Texas, to confiscate the above described oil and to make defendants thereto, the Trinity Refining Company and David Donoghue, Trustee, so that the rights of all claimants in and to said oil can be adjudicated; and further prays that this Honorable Court modify its order of February 13, 1936, ordering the Trustee, David Donoghue, to sell said oil, and [fol. 109] now order said Trustee to hold said oil in his posession pending adjudication of the title in and to said oil.

William McCraw, Attorney General of Texas. W. J. (Dick) Holt, Assistant Attorney General. William C. Davis, Assistant Attorney General. Joe Sharp, Assistant Attorney General. C. M. Kennedy, Assistant Attorney General.

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In United States District Court

[Title omitted]

Debtor's Answer to Motion of the State of Texas for Permission to Proceed in Confiscation Proceedings Against 69,900 Barrels of Oil Now in Possession of the Trustee

To the Hon. James C. Wilson, Judge of said Court:

Comes now Trinity Refining Company, a corporation, Debtor in the above entitled and numbered cause, by its attorneys and for answer to the motion of the State of Texas for permission to proceed in confiscation proceedings against 69,900 barrels of oil now in the possession of [fol. 110] David Donoghue, Trustee herein, would show to the Court:

1

In a certain cause styled The State of Texas vs. V. E. Jackson, et al., in the 126th Judicial District Court of Travis County, Texas, being docket No. 56252, which suit was a suit instituted by the Attorney General of the State of Texas in the name of the State against V. E. Jackson, et al., to recover fines and penalties for alleged violations of the conservation laws of the State, the Receivers appointed by the State Court, J. C. Clopton and Bullock Hyder, filed a motion on November 20th, 1935, in the State Court in which they alleged that they had found approximately 60,000 barrels of fuel oil, describing the same, which belonged to the defendants and asking to be permitted to take into their custody and control as Receivers said oil as the property of the defendants. That the oil referred to and mentioned in such motion of said State Receivers was and is the same and identical oil referred to as the 69,900 barrels of oil now in the custody of David Donoghue, Trustee in this proceeding. The State Court, upon the filing of such motion and upon a hearing thereon, found said oil to be the property of the defendants and ordered the same taken into the custody and control of said Receivers as the property of the defendants. That present at and participating in said hearing were members of the staff of the Attorney General of Texas representing the plaintiff, the State of Texas.

The Debtor would show that upon the hearing aforesaid, there was no motion filed on behalf of the State of Texas, nor any suggestion made by the Assistants Attorney General present and participating in said hearing that the oil in question was illegal oil or was subject to confiscation by the State, and no effort was made by the State or the Attor- [fol. 111] ney General to subject said oil to confiscation proceedings, but the State and the Attorney General's office permitted and acquiesced in the order and decree of the State Court that the oil belonged to the defendant and should be recovered by the State Receivers as the property of the defendants. The Debtor says that in failing to move for its confiscation in said State Court at the time of said hearing and in suffering the judgment to be rendered by the State Court decreeing the title and possession of such oil to be in the Receivers as the property of said defendants, that the State of Texas has waived its right to be heard to

say that such oil is contraband and subject to confiscation by the State; and that such judgment by the State Court is res judicata of all matters and things that might have been raised and urged by the State on said hearing and now effectively bars the State from bringing or attempting to bring any action for the confiscation of such oil.

2

The Debtor would show that thereafter in said cause, A. C. Wylie filed his intervention, claiming the aforesaid oil and requesting the State Court to order the State Receivers to transfer and deliver said oil to him. Thereafter on the 18th day of December, 1935, said intervention came on to be heard in the State Court and after such hearing, said Court denied the request of the intervener that the Receivers be required to deliver such oil to said intervener, and it was ordered and adjudged by the State Court that the said Clopton and Hyder, the Receivers, have and recover from Wylie, the intervener, the title and possession of said oil as the property of the defendants.

The Debtor would show that at said hearing the State of Texas was represented by the Attorney General's office, and that representatives of the Attorney General were present [fol. 112] and participated in said hearing, and Debtor would show that at said hearing there was no motion filed in behalf of the State of Texas, nor any suggestion made by the Assistants Attorney General present and participating therein that the oil in question was illegal oil or was subject to confiscation by the State, and no effort was made by the State or the Attorney General to subject said oil to confiscation proceedings, but the State of Texas and the Attorney General's office permitted and acquiesced in the order and decree of the State Court that the title of such oil was in the State Receivers as the property of the defendants in the State case. The Debtor says that in filing to bring confiscation proceedings against said oil and in failing to move for its confiscation in said State Court at the time of said hearing, and in suffering the judgment to be rendered by the State Court decreeing the title and possession of such oil to be in said Receivers as the property of said defendants, that the State of Texas has waived its right to be heard to say that such oil is contraband and subject to confiscation by the State; and that such judgment

by the State Court is res judicata of all matters and things that might have been raised and urged by the State on said hearing and now effectively bars the State from bringing or attempting to bring any action for the confiscation of such oil.

3

The Debtor alleges that House Bill No. 581, Acts of the 44th Legislature, effective May 11, 1935, being commonly known as the Confiscation Act and being the statute of the State of Texas which the State in its motion urges as its authority to confiscate the oil involved herein, is wholly void and unconstitutional in that it violates the Fourteenth Amendment to the Constitution of the United States, and that no proceedings under such statute by the State for the confiscation of this oil would be valid.

[fol. 113] 4

The Debtor would show that its creditors are innocent of any and all wrongs and violations which the State charges were committed with reference to the aforesaid oil; that said creditors did not participate directly or indirectly in any of the violations charged by the State to have been committed with reference to such oil and had no knowledge of the commission of such violations, if any there were. The Debtor expressly denies that such oil was illegally produced or is the product of illegally produced oil, or that any laws of the State or rules and regulations of the Railroad Commission were violated in connection with its production, processing, handling or transportation, but the Debtor says that in no event should its creditors, who are wholly innocent as aforesaid, be penalized by the loss of this oil through confiscation proceedings. The Debtor would show that it and its creditors are and of right ought to be entitled to the full uses of said oil; that the oil is now situated in an open earthen pit and is every day subjected to the hazards of fire and damage by the elements, as well as the ordinary evaporation and depreciation to which exposed petroleum is necessarily subjected. That there is now a market in which this oil can be presently sold; that a tender for its sale has been granted by the Railroad Commission of Texas, and the spirit and purpose of conservation and conservation laws require that this oil should be immediately removed from the earthen pit in which it is stored and put

into ordinary and legitimate commerce for the use and benefit of mankind. That the proceeds of this oil will make a substantial payment to the creditors of the Debtor and such creditors are entitled to have the oil sold and the proceeds paid to them upon their debts.

5

By virtue of the finding and decree of the State Court aforesaid, adjudging the title of said oil to be in the de- [fol. 114] fendants, of which this Debtor is one, and by virtue of the fact that said oil is the property of this Debtor, this Court, under the terms and provisions of Section 77-b of the Bankruptcy Act of 1898 as amended, has exclusive jurisdiction of such property of the Debtor and is bound under the law to retain such jurisdiction over said property and to itself administer the same; and is powerless to surrender the same to any other person or tribunal.

Wherefore, the Debtor prays that the motion of the State to be permitted to proceed to institute confiscation proceedings against this oil be in all things denied, and that the Trustee herein be directed forthwith to sell said oil and to deposit the proceeds of such sale in the registry of this Court for such disposition as the Court may hereafter determine shall be meet and proper.

—— ——, —— ——, Attorneys for the Debtor.

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IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FOR RELEASE OF OIL TO RECEIVERS, ETC.

On the 30th day of March, 1936, came on for hearing the amended motion of the State of Texas, acting by and through William McCraw, its Attorney General, for permission to proceed in confiscation proceedings against 69,900 barrels, more or less, of weathered and/or topped [fol. 115] crude oil in an earthen pit in Upshur County, Texas, and the following oil in Gregg County, Texas: About 5,000 barrels, more or less, in steel storage tank No. 5 on the Phillips lease, and about 10,000 barrels, more or less, of fuel oil in tank No. 10 on the Callum lease, and approxi-

mately 25,000 barrels, more or less, of oil in tank No. 25 on the Callum lease, and about 37,500 barrels, more or less, of fuel oil in tank No. 37 on the Hanbury lease; and after hearing evidence and argument thereon, the Court finds that Trinity Refining Company, Debtor herein, has no interest in the 69,900 barrels, more or less, of weathered and/or topped crude in the earthen pit in Upshur County, Texas, and that Trinity Refining Company, Debtor herein, does own the oil in steel storage in Gregg County, Texas.

It Is, Therefore, Ordered that David Donoghue, Trustee herein, release his possession to J. C. Clopton and Bullock Hyder, Receivers, of 69,900 barrels, more or less, of weathered and/or topped crude of a gravity of approximately 24 gravity and being situated in what is known as the Farris earthen pit in the Augustine Survey in Upshur County, Texas, and being the exact, same and similar oil described and mentioned in a judgment rendered in Cause No. 9217-C styled A. C. Wiley vs. East Texas Oil & Refining Company in the Special District Court of Gregg County, Texas, and being the same oil described in the plea of intervention filed by A. C. Wiley in Cause No. 56252, styled The State of Texas vs. V. E. Jackson, et al., in the 126th Judicial District Court of Travis County, Texas, and being the same oil that was described in a judgment rendered in cause No. 56252 styled The State of Texas vs. V. E. Jackson, et al., in the 126th Judicial District Court of Travis County, Texas, on the motion of A. C. Wiley to vacate the receivership therein as to the oil therein described; and

It Is Further Ordered that the said David Donoghue, Trustee, have and exercise no further possession, control [fol. 116] or management over said 69,900 barrels, more or less, of oil contained in the earthen pit above described; and

It Is Further Ordered that David Donoghue, Trustee, retain possession, control and management of the oil located in Gregg County, Texas, described as approximately 5,000, more or less, barrels of oil in steel storage tank No. 5 on the Phillips lease, Block 77, M. Dillard Survey, and approximately 10,000 barrels; more or less, of fuel oil in tank No. 10 on the Callum lease in the Rhodes Survey, and approximately 25,000 barrels, more or less, of oil in tank No. 25 on the Callum lease in the Rhodes Survey, and also about 37,500 barrels, more or less, of fuel oil located

in tank No. 37 on the Hanbury lease in the Hokit Survey, subject to the further orders of this Court.

Dated and entered this the 26 day of June, 1936.

James C. Wilson, United States District Judge.

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In United States District Court

[Title omitted]

Request to File Findings of Fact and Conclusions of Law

To the Honorable James C. Wilson:

Come now the State of Texas, William McCraw, Attorney General of Texas, W. J. Holt, C. M. Kennedy, Joe Sharp, and William C. Davis, Assistants Attorney General, and J. C. Clopton and Bullock Hyder, Receivers, and request [fol. 117] that the Court prepare and file findings of fact and Conclusions of Law as a basis for the entry of the judgment, wherein this Honorable Court refused to grant the motions heretofore filed in this cause by the undersigned all as shown in said judgment entered by this Court.

Respectfully submitted, William McCraw, Attorney General of Texas. W. J. Holt, Assistant Attorney General. Joe Sharp, Assistant Attorney General. C. M. Kennedy, Assistant Attorney General. William C. Davis, Assistant Attorney General.

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In United States District Court

No. 1939

In the Matter of Trinity Refining Company, a Corporation, Debtor

In Proceedings for Corporate Reorganization

Findings of Fact and Conclusions of Law

Before Honorable James C. Wilson, District Judge

The movants, the State of Texas, William McCraw, Attorney General of Texas, W. J. Holt, Joe Sharp, C. M. Kennedy and William C. Davis, Assistants Attorney Gen-

eral, and J. C. Clopton and Bullock Hyder, Receivers, having filed herein a written request that the Court prepare and file Findings of Fact and Conclusions of Law as a basis for the entry of a judgment herein, from which the movants are appealing to the Circuit Court of Appeals [fol. 118] of the United States for the Fifth Circuit at New Orleans, I hereby make the following Findings of Fact and Conclusions of Law;

There was no evidence introduced either by the Receivers Clopton and Hyder and the State of Texas on the one hand, or by the Debtor, Trinity Refining Company, on the other, as to the facts involved herein; but by stipulation in open Court of all said parties, the allegations in the various motions, pleas, and other written presentations to this Court as to the pleadings and motions filed in the State Courts, and the action of the Courts thereon, are to be taken as proved, and the Receivers Clopton and Hyder, and the State of Texas having filed herein their request therefor, I make Findings and Conclusions as follows:

## Findings of Fact

### I

I find that on the 12th day of October, 1935, the State of Texas, by its duly elected, qualified and acting Attorney General, William McCraw, entered suit in the District Court of the 126th Judicial District of Texas in Travis County, Texas, which was numbered 56,252 on the docket of that Court. One of the defendants was the debtor in the instant cause; namely, the corporation, Trinity Refining Company. The State sought enforcement and collection of fines, penalties and interest alleged to aggregate 791,000 and to have been incurred by numerous violations on the part of the defendants of the oil conservation laws of the State of Texas (Article 6036, R. C. S. of Texas, Acts 44th Legislature, p. 180, Chapter 76, Section 12, Acts 1935).

### II

That the State of Texas in said suit also asserted, and is still so asserting, a statutory lien as is provided for in [fol. 119] Article 1373 of the said state statutes upon all of the properties and estates of the said Trinity Refining Company and also the foreclosure of such lien to secure the payment of the amounts so claimed. In said suit the

State of Texas prayed for the appointment of receivers to aid the foreclosure of the statutory lien asserted, and also asked that the receivers be empowered to take over, hold and operate the property of the defendants for the purpose of securing the payment of the alleged fines, penalties and interest.

III

Citation and notice were duly served upon Trinity Refining Company and the other defendant, notifying them to appear on the 19th day of October, 1935, and show cause why receivers should not be appointed as prayed for and why an injunction should not issue against them; and upon the day appointed, the parties defendant, including Trinity Refining Company, came not. Thereupon, the Attorney General announced ready for trial. The Court directed the Attorney General to proceed with the hearing, which was done, and in due course the testimony of a number of witnesses was received. After considering the matter and the argument of counsel, the Court found that the appointment of receivers to take charge of the properties of Trinity Refining Company and the other defendants was amply warranted.

IV

The State District Court, following the hearing, on the 25th day of October, 1935, entered its order appointing J. C. Clopton and Bullock Hyder receivers to take over and authorized them to take over all the properties, estates and assets of all of the defendants, including Trinity Refining Company, described in the order of the Court, and directed them to hold said properties pending the trial of said cause [fol. 120] No. 56252 in order to conserve the property pending the foreclosure of the statutory lien asserted in said cause.

V

Thereafter the State Court receivers qualified by giving the necessary bond and taking the oath required, and on October 30th, 1935, actually took charge of the properties and estates of Trinity Refining Company and the other defendants, described in the order of the Court, and continued to hold said properties until the 18th day of December, 1935, when they were summarily dispossessed by David Donoghue, the Trustee appointed by this Court in the instant cause.

VI

On the 14th day of December, 1935, the State of Texas, by and through its Attorney General, filed in the District Court for the 98th Judicial District of Texas, Travis County, another suit, being cause No. 56476, in which it sought to recover delinquent taxes alleged to have been incurred by reason of the defendants' activities in refining, manufacturing, producing, blending and compounding motor fuel and by making the first sale, distribution and use thereof within the State of Texas; also penalties and interest alleged to have accrued by reason of the operation of certain of the defendants' properties. The total claim asserted in this suit was $104,084.97, but by amendment filed January 8th, 1936, the claim was increased to over $300,000.00. The defendants named in that suit were exactly the same as those in cause No. 56252. The suit was alleged to be filed pursuant to the provisions of H. B. 247 passed by the 43rd Legislature of said State, as amended by H. B. 749, Acts of the 44th Legislature, known as Article 7065-a, Revised Civil Statutes of Texas. The [fol. 121] State also sought in this case foreclosure of a lien created by the State statutes and claimed by the State to be made by the statutes first and prior to any and all other liens upon the properties of any disributor of motor fuel as defined in said statutes. The State also asked for the appointment of receivers in aid of the foreclosure sought.

VII

Immediately upon the filing of the last mentioned suit, the State District Judge declined at that time to appoint receivers to take charge of the properties and assets of said defendants, for the reason assigned by the Court that the receivers appointed in cause No. 56252 by another Court of the same jurisdiction were then in possession of the properties and estates involved pursuant to Court order.

VIII

Citation and notice were duly issued in cause No. 56476 and service thereon was had.

IX

On the 18th day of December, 1935, Trinity Refining Company, a corporation, one of the defendants in causes

Nos. 56252 and 56476, pending in the State District Courts, filed its petition as debtor in the United States District Court for the Northern District of Texas at Fort Worth under the provisions of Section 77-b of the Bankruptcy Act of 1898, for reorganization under the terms and provisions of said Section 77-b. The United States District Judge found that said petition was filed in good faith and approved the same as properly filed. Simultaneously with the filing of said petition, the Debtor filed a plan of reor- [fol. 122] ganization. In accordance with the prayer in said petition, the Court appointed a trustee of the properties of Trinity Refining Company, a corporation, Debtor. On the 18th day of December, 1935, David Donoghue was appointed Trustee by the Court, and qualified on the same day, and in keeping with the Court's order did on the 19th day of December, 1935, demand of and receive from the State Receivers, J. C. Clopton and Bullock Hyder, the properties and estates of Trinity Refining Company, Debtor. The United States District Judge directed that notice should issue under Section 77-b to all parties whose interests might be affected by the proposed plan of the Debtor for reorganization to appear before the United States District Court at Fort Worth at ten o'clock A. M., on the 13th day of January, 1936, and be heard in reference to the Debtor's proceedings for corporate reorganization and in reference to the Debtor's petition and continuing possession in the hands of the Trustee of the properties of the Debtor, and make such objections, if any they had, to the pursuing of said proposed plan of reorganization.

X

Cause No. 56476 pending in the 98th Judicial District Court of Travis County, Texas, was on the 8th day of January, 1936, upon motion of the State of Texas, plaintiff, transferred to the 126th Judicial District Court of Travis County. The District Judge of the 126th Judicial District Court did on January 8th, 1936, enter an order appointing J. C. Clopton and Bullock Hyder receivers of the properties and estates of Trinity Refining Company and the other defendants, reciting that said appointment was in aid of the foreclosure of the statutory lien involved in cause No. 56476. The District Judge required no additional bond

of these Receivers, declaring that the original bond given by them in cause No. 56252 should be adequate.

[fol. 123] XI

On the 13th day of January, 1936, the State of Texas, through William McCraw, its Attorney General, and J. C. Clopton and Bullock Hyder, Receivers in the state cases, referred to, filed their pleas to the jurisdiction of the United States District Court sitting at Forth Worth in pursuance of the provisions of Section 77-b of the Bankruptcy Act, in response to the order theretofore entered by the United States District Judge directing the Trustee appointed by him to take over from the State Court Receivers certain properties and estates of Trinity Refining Company, a corporation, Debtor, and asserting further, without waiving their plea for the jurisdiction, that the petition as filed by Trinity Refining Company, Debtor, was not filed in good faith as contemplated by the amendment to the Bankruptcy Act, and that the plan as submitted was not feasible, and for such reasons, the same should be dismissed.

XII

On that same day of the filing of the plea to the jurisdiction and the motion in opposition to the approval of the petition of the Debtor and approval of the plan of reorganization, the State of Texas and the State Court Receivers filed a motion requesting the Court to stay all proceedings in the Federal Court under Section 77-b and grant the State and the Receivers the right to prosecute their asserted penalty claims and asserted tax claims in the suits pending in the State Courts and that all proceedings be stayed in the Federal Court until such suits for penalties and suits for taxes were prosecuted to final judgment in the State Courts; which motions and answers are made a part of the bill of exception filed in this record.

[fol. 124] XIII

The United States District Court postponed the hearing set for the 13th day of January, 1936, until the 14th day of January, 1936, and on said date said hearing began, and at said hearing there was presented to and considered by the Court, among other matters and things, the several

pleas to the jurisdiction and motions of the State of Texas and the State Receivers, and on the 15th day of January, 1936, the Court entered its order which, among other things, overruled the several pleas to the jurisdiction and motions of the State of Texas and said State Receivers in all things and continued the Trustee theretofore appointed in possession and control of the properties and estates of the Debtor and continued in full force and effect the injunctions theretofore issued restraining any interference by any one with the Trustee in the possession and control of the properties and estates of the Debtor, and in addition thereto, enjoined and prohibited the institution and prosecution of any suit or suits against the said Debtor; to all of which action the State of Texas and J. C. Clopton and Bullock Hyder, State Receivers, duly excepted. Said order is made a part of the bill of exception and set out in full.

XIV

On the 22nd day of January, 1936, the State of Texas, by and through its Attorney General, filed its motion in this cause directed to this Court, requesting the Court to correct and modify the judgment, order and decree entered on the 15th day of January, 1936, and grant the State of Texas authority to continue the prosecution of the cases pending in the State Courts, to-wit, causes Nos. 56252 and 56476, as against all defendants in said causes other than Trinity Refining Company, a corporation, Debtor, and the [fol. 125] Court did on the 22nd day of January, 1936, hear said motion and granted the same. Said motion and order are made a part of the bill of exception and set out in full.

XV

On the 18th day of February, 1936, said State Receivers presented their motion in the two causes pending in the State Court, they being treated as one by the Court, and in response thereto, the District Court for the 126th Judicial District, Travis County, entered its order directing the two receivers to take appropriate action before the Federal Court in the instant cause, seeking to have returned to them the properties and estates of Trinity Refining Company which had been summarily taken from them by David Donoghue, the Trustee appointed by this Court,

and seeking to have the injunction dissolved which this Court had issued restraining them. The State Receivers claimed and the State Court decreed that this action was taken in order to avoid unseemly conflicts between the State District Courts and the United States District Court for the Northern District of Texas, sitting at Fort Worth.

XVI

Pursuant to the order of the State District Judge, directing the Receivers to institute appropriate proceedings in this cause, seeking the return of the properties of Trinity Refining Company, Debtor, to them, and also seeking the dissolution of the injunctions which this Court had issued restraining them, said Receivers filed their motion in this cause, joined by the State of Texas, asserting that this Court was without jurisdiction to take the properties of Trinity Refining Company, Debtor, from them by summary order, since the State Court suits in which statutory liens were asserted had been filed prior to the filing of the [fol. 126] petition of Trinity Refining Company, a corporation, for corporate reorganization under Section 77-b in this Court, and that citation had issued in each of said causes, and that same were duly served, and that receivers had been appointed by the State District Judge in the State's suit wherein penalties were sought to be recovered against Trinity Refining Company and others, with directions and authority to take into their possession the properties of Trinity Refining Company, and that they had done so and were in possession thereof at the time the same were taken over from them by David Donoghue, Trustee appointed by this Court in said corporate reorganization proceeding. Said motion is made a part of the bill of exception and set out in full.

XVII

Simultaneously with the filing of the motion set out in the preceding paragraph, the State of Texas, through its Attorney General, filed a motion wherein it asserted that the injunctions theretofore issued by this Court in this cause against all persons from interfering with David Donoghue, Trustee, in the possession of the properties of Trinity Refining Company, Debtor, and the issuance of the injunctions whereby the institution of any suits or causes

of action against Trinity Refining Company, Debtor, were enjoined, which was in effect a suit against the State of Texas in violation of the Eleventh Amendment to the Constitution of the United States, and for such reason such motion should be granted and such injunctions against the State should be dissolved.

XVIII

The State of Texas, through its Attorney General, at the time of the filing of the motion referred to in the preceding paragraph and subject to the pleas to the [fol. 127] jurisdiction filed in this Court by the State, by amended motion in this cause seeks permission to institute confiscation proceedings in a Court of competent jurisdiction in Travis County, Texas, against approximately 77,000 barrels of crude oil in steel storage and now in the hands of David Donoghue, Trustee in this cause, being the property of Trinity Refining Company, Debtor, and which oil the State of Texas in its motion alleges is illegal and subject to confiscation under the statutes of the State of Texas. In addition to the permission and subject to the pleas to the jurisdiction the State, through its Attorney General, requested the right to institute confiscation proceedings against approximately 69,000 barrels of crude oil situated in what is known as the Farris Pit in the Augustine Survey in Upshur County, Texas, it being alleged in said motion that said oil was illegal under the statutes of the State of Texas and was in the possession of the State Court Receivers prior to the time that David Donoghue, Trustee in this cause, took the same into his possession under the order of the Court appointing him.

XIX

The Debtor filed its motion to dismiss the motion of the State of Texas and J. C. Clopton and Bullock Hyder, Receivers, as set out in paragraphs XVI and XVII above, for an order dissolving the injunction heretofore issued by this Court against the Receivers from interfering with the possession of David Donoghue, Trustee, and for an order directing David Donoghue, Trustee, to turn over to said Receivers the properties and estates of Trinity Refining Company, Debtor, because the State of Texas and the State Receivers had theretofore filed pleas and motions to this Court involv-

ing the same and all of the matters and things that they urged in their motions referred to in paragraphs XVI and XVII above, which motion to dismiss is fully set out in this [fol. 128] bill of exception, and the Court had on the 15th day of January, 1936, after duly considering all said matters and things, overruled, refused and denied the pleas and motions of the State and said Receivers.

XX

The Debtor answered the amended motion of the State for authority to proceed in confiscation proceedings against approximately 77,000 barrels of crude oil in steel storage and approximately 69,000 barrels of crude oil in the Farris Pit, and claimed, among other things, that the State of Texas was estopped from claiming that the oil was illegal oil and subject to confiscation, because of the proceedings had in the State Court in which the title to said oil was in question and the State and the State Receivers were parties to the suit that adjudicated ownership of the oil in Trinity Refining Company and other defendants, and claiming that the creditors of the Debtor were innocent of any wrongs and violations which the State charged were committed with reference to the aforesaid oil, if any there had been, and that said creditors did not participate, directly or indirectly, in any of the violations charged by the State to have been committed with reference to said oil, if any there were, and that the oil in question was the property of the Debtor and under the provisions of Section 77-b the Federal Court had exclusive jurisdiction of the properties of the Debtor. Said answer is fully set out in the bill of exception.

XXI

The Court heard the motions of the State and the State Receivers referred to in paragraphs XVI, XVII and XVIII above and the motion and answer of the Debtor referred to in paragraphs XIX and XX above, and on the 30th day of May, 1936, the motion of the Debtor to dismiss the motions [fol. 129] of the State of Texas and the State Receivers referred to in paragraph XVI above, was sustained by the Court; to which action of the Court the State of Texas and said Receivers duly excepted; which order is set out above and made a part of this bill of exception. On the 30th day of

May, 1936, the Court granted the State's motion to set aside all injunctive orders heretofore issued in so far as the same restrained the State of Texas from prosecuting causes No. 56252 for the recovery of penalties and No. 56476 for the recovery of taxes, penalty and interest, and dissolved all injunctions that would conflict with this order; which order is made a part of this bill of exception. And on the 30th day of May, 1936, the Court entered an order on the State's motion to confiscate certain oil, directing David Donoghue, the Federal Trustee, to release all possession and control that he had and exercised over approximately 69,900 barrels of oil in the earthen pit called the Farris Pit in the Augustine Survey in Upshur County, Texas, and directed the said David Donoghue, Trustee, to retain possession of the oil in steel storage then in the possession of said Trustee; to all of which action the State of Texas duly excepted and gave notice of appeal. Said order and said exception is made a part of this bill of exception and incorporated in full above.

CONCLUSIONS OF LAW

*L*

The holdings in the various decrees and orders entered by this Court upon the motions and answers filed herein by the parties are to be considered as the conclusions of law arrived at by the Court.

James C. Wilson, United States District Judge.

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[fol. 130] ORDER SETTLING BILL OF EXCEPTIONS

Thereafter, and within the time allowed by law, the appellants, the State of Texas and J. C. Clopton and Bullock Hyder, State Court receivers, duly tendered this their Bill of Exceptions herein, which having been seen and examined by the Court and counsel is by the Court allowed, and approved by the Honorable James C. Wilson, District Judge of said Court, before whom said proceedings were had, and the same is ordered by the said Court to be filed and made a part of the record herein, which is now accordingly done.

Given under the name of the Judge of said Court before whom said proceedings were had this the 26 day of June, 1936.

James C. Wilson, United States District Judge for the Northern District of Texas, Fort Worth Division.

The above and foregoing bill of exceptions is hereby approved.

William McCraw, Attorney General of Texas; W. J. Holt, C. M. Kennedy, Joe Sharp, William C. Davis, Assistant Attorney General, Attorneys for the State of Texas. W. B. Harrell, Attorney for David Donoghue, Trustee in Bankruptcy.

Let the Bill be filed and the filing shown of record as this 26 day of June, 1936.

James C. Wilson, District Judge.

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[fol. 131] IN CIRCUIT COURT OF APPEALS OF THE UNITED STATES FOR THE FIFTH CIRCUIT

Appeal in the Matter of Trinity Refining Company, a Corporation, Debtor, Being No. 1939 in Proceedings for Corporate Reorganization, Pending in the District Court of the United States for the Northern District of Texas, Fort Worth Division.

PETITION FOR APPEAL—Filed June 27, 1936

To the Honorable, the Judges of the Circuit Court of Appeals for the Fifth Circuit of the United States:

Your petitioners, the State of Texas and J. C. Clopton and Bulloc . Hyder, Receivers appointed by the District Court of the 126th Judicial District of Travis County, Texas, respectfully represent:

1

The State of Texas and J. C. Clopton and Bullock Hyder, Receivers, were movants in a certain proceeding in the matter of Trinity Refining Company, a corporation, debtor,

No. 1939 in Proceedings for Corporate Reorganization, pending in the District Court of the United States in and for the Northern District of Texas, Fort Worth Division, wherein Trinity Refining Company, a corporation, filed its petition for corporate reorganization under the provisions of Section 77b of the Act of Congress amendatory to the Bankruptcy Act of 1898 (Sec. 207, Title 11, U. S. C. A.)

2

In cause No. 56,252, in the 126th Judicial District Court of Travis County, Texas, the State of Texas, pursuant to [fol. 132] the provisions of Title 102 of the Revised Civil Statutes of the State of Texas as amended, did on the 12th day of October, 1935, file a suit to recover penalties not to exceed $1,000.00 per day, as provided by law, alleging seven hundred ninety-one violations of the oil and gas conservation statutes of the State of Texas. The defendants in the suit were V. E. Jackson, Trinity Refining Company, incorporated but having forfeited its rights to do business in Texas at the time of the filing of the suit, but later reinstating its corporate right by payment of a franchise tax; J. B. Sowell; T. W. Sowell; C. B. Sowell and the Minor Pipe Line Company. By amendment filed on October 25, 1935, the State pleaded its statutory lien upon the properties of defendant corporation and sought a foreclosure of its lien for the collection of the penalties and asked for the appointment of receivers. The hearing on the application for the State's receivership was heard on October 25, 1935, after statutory notice, and the Court appointed Bullock Hyder and J. C. Clopton, receivers of the properties of Trinity Refining Company and the pipe line known as Minor Pipe Line Company, together with three oil wells on the J. B. Walker Lease in Gregg County. In this suit the State charged a conspiracy between the parties defendant to violate the conservation laws of the State and alleged that the properties were so managed, owned and operated by the defendants jointly that the true ownership was a matter peculiarly within the knowledge of the defendants. On November 25, 1935, the Receivers made application to take into receivership a pit of oil containing substantially 70,000 barrels of fuel oil and other oil in tanks of substantially 75,000 barrels. A. C. Wylie intervened in this suit, and his application to modify the order so as not to include the fuel

oil stored in the pit was heard on December 18, 1935, the Court entering an order denying the intervener the relief sought.

In cause No. 56,476, in the District Court of Travis County, the State of Texas filed its suit on December 14, [fol. 133] 1935, in behalf of the Comptroller of the State of Texas against the same defendant, asserting a statutory lien for delinquent tax on motor fuel under the Motor Fuel Law of the State of Texas. The State in this suit asked for the appointment of Receivers to take charge of the property and for a foreclosure of its lien. The amount alleged to be delinquent, including taxes and penalties, by amendment was asserted to be $323,644.03: On January 8, 1936, in response to the State's application, the same Court appointed the same Receivers and provided in the order that the bond theretofore given by the Receivers then appointed and acting in Cause No. 56,252, was sufficient bond.

The defendant in cause No. 56,252, filed its petition for removal to the United States District Court for the Western District of Texas, and sought an injunction against the Receivers in operating the properties. Upon hearing of this application and a motion to remand, the application was denied and the cause was remanded to the State Court. Subsequently, on December 18, 1936, the Trinity Refining Company as Debtor, filed its petition under Section 77b of the Bankruptcy Act, in the United States District Court for the Northern District of Texas, and submitted with the petition when filed a plan of reorganization, and on the same day, December 18, 1935, the United States District Judge, without notice of any kind, entered an order containing, among other things, the following:

"And it is further ordered that said debtor and J. C. Clopton and Bullock Hyder, Receivers appointed by the District Court of Travis County, 126th Judicial District of Texas, and any and all persons having control or possession of any of the properties or estate of said debtor, forthwith deliver to said Trustee herein all of the property, assets, and effects of debtor, now in the possession [fol. 134] or control of them or either of them * * * and all creditors of said debtor, as well as each of their attorneys, agents and servants, and all sheriffs, marshals, and other officers, deputies and their employees, be and

they are hereby jointly and severally restrained and enjoined from removing, transferring, or otherwise interfering with the property, assets and effects of the above named debtor, and from prosecuting, executing or suing out of any Court any process, attachment, or other writ for the purpose of taking possession, impounding or interfering with any property, assets, or effects of said debtor, and from molesting, disturbing, or interfering with the Trustee named and appointed herein and hereby in the discharge of his duties."

The State and J. C. Clopton and Bullock Hyder on the 13th day of January, 1936, filed a plea to the jurisdiction of the Federal Bankruptcy Court asserting that the State Court was in possession of the properties of the Trinity Refining Company and was being held by them as receivers pending the foreclosure of the State's lien. The Receivers were never authorized by order of the Court appointing them to file any pleas in the Bankruptcy Court. This plea to the jurisdiction was overruled. Later, the State of Texas and J. C. Clopton and Bullock Hyder in their capacities as Receivers, and being duly authorized by order of the Court appointing them to bring appropriate proceedings in the Bankruptcy Court looking to the return of the properties of the Trinity Refining Company to them, which had been summarily taken from them by the Bankruptcy Trustee, the plea in the Federal Court setting forth substantially that prior to the filing by the Trinity Refining Company of its petition for corporate reorganization in the Bankruptcy Court, that they were the duly appointed, qualified and acting Receivers in certain causes pending in a State District Court of co-ordinate jurisdiction, and [fol. 135] that they were appointed by orders of that Court pursuant to the filing of suits and prayer therefor in certain suits whereby the State of Texas was asserting:

(a) A lien upon all of the property of Trinity Refining Company, a corporation, created by the laws of the State of Texas, to secure the payment of certain penalties incurred by Trinity Refining Company on account of having violated the conservation laws of the State of Texas, said penalties being sued for and alleged to be owing by Trinity Refining Company as a result of such violations, said Receivers being appointed in aid of foreclosure of said lien.

(b) A lien upon all of the property of Trinity Refining Company, a corporation, and others given by the laws of Texas to secure the payment of certain taxes, fines and penalties sued for in said suit and alleged to be owing by Trinity Refining Company and others by reason of the processing of gasoline from crude petroleum oil, said receivers being appointed in aid of the foreclosure of said lien.

Further, that the Receivers appointed by such State Court were in possession of the properties of the Trinity Refining Company and were asserting dominion and control over same pursuant to the orders of the Court appointing them, said property being held by said State Court Receivers for the purpose of preserving the properties of Trinity Refining Company and others pending the outcome of such suits brought by the State of Texas, and the foreclosure of asserted statutory liens.

That not withstanding the fact that the State Court had appointed Receivers pursuant to suits filed by the State of Texas for the recovery of taxes, fines and penalties and the foreclosure of statutory liens, and notwithstanding [fol. 136] the fact that such State Court Receivers were in possession and control of the properties of Trinity Refining Company and others prior to the filing of the petition for corporate reorganization by the Trinity Refining Company in the Federal Bankruptcy Court, the United States District Court entered its order directing David Donoghue, Trustee in said corporate reorganization proceedings to summarily take over from the State Court Receivers the properties of the Trinity Refining Company without first moving the State Court to release said properties and without observing due comity between Courts of coordinate jurisdiction, and deliberately bringing about a condition resulting in unseemly conflicts between a State and Federal Court.

3

The State of Texas and the Receivers asserted in their motion that inasmuch as State Courts of coordinate jurisdiction had entertained suits and had taken jurisdiction of the same brought by the State of Texas against Trinity Refining Company and others, seeking the recovery of taxes, fines and penalties, and the assertion in said State

Court suits of statutory lines, that the order entered by the United States District Court was unauthorized, and that the State Court having first taken jurisdiction of the res, that they should be permitted to hold same without interference from the Court of the United States sitting in bankruptcy.

4

The order of the Federal Bankruptcy Court overruling such motions of the State and Receivers in the proceedings for Corporate Reorganization was erroneous for the reason that it appears from said motion and supporting proof that State Courts of co-ordinate jurisdiction by virtue of suits [fol. 137] filed in said Courts by the State of Texas, seeking the recovery of taxes, fines and penalties and the enforcement of statutory liens securing payment of same, and the subsequent appointment of Receivers by said Courts to take charge of the properties of Trinity Refining Company and others had jurisdiction of said suits upon a date prior to the filing of the petition for corporate reorganization under Section 77b by Trinity Refining Company, a corporation, in the Federal Bankruptcy Court, the entry of said order denying said motions being further erroneous by reason of the fact that the proceedings in the State Court were not equity receiverships as contemplated by the provisions of Section 77b of the Act of Congress amendatory to the Bankruptcy Act of 1898 (Section 207, Title 11, U. S. C. A.)

5

Without waiving the Pleas to the Jurisdiction theretofore filed, the State of Texas, by and through William McCraw, Attorney General of the State of Texas, filed its motion in the Proceedings for Corporate Reorganization, in the United States District Court, moving said Court to enter its order authorizing the State of Texas, through its Attorney General, to institute in a Court of competent jurisdiction in Travis County, Texas, confiscation proceedings as authorized and permitted by House Bill 581, Act of the 44th Legislature, and also moving said Court to permit the State of Texas in such confiscation proceedings to make the Trinity Refining Company, a corporation, debtor, and David Donoghue, Trustee appointed by the United States District Court, parties defendant to said

confiscation suit in the State Court, the nature of the suit being to confiscate certain crude petroleum oil and the products thereof set forth in the State's motion; that on the 30th day of March, A. D. 1936, the State of Texas, through [fol. 138] its Attorney General, filed an amended motion, amplifying and enlarging the motion theretofore filed, seeking permission of the United States District Court to institute confiscation proceedings in a State Court of competent jurisdiction in Travis County, Texas, as aforesaid; that after the presentation of such motion, and after considering the answer of interveners and interested parties, the United States District Court entered its order denying the State of Texas leave to institute such confiscation proceedings in a State Court, as to a portion of said oil.

6

The action of the District Court in denying said motion was erroneous for the reason that it appeared after hearing said motion that the oil set forth in said motion was illegal oil, as defined by the statutes of the State of Texas, and that by reason thereof, the title to such oil and oil products was in the State of Texas, and that the State was authorized under the laws of said State to bring such confiscation proceedings.

7

The entry of said order denying the State's motion to proceed with the confiscation proceedings in the State Court was erroneous for the reason that it is not within the competence of the Courts of the United States to entertain any such proceedings as are authorized by the conservation laws of the State of Texas, whereby the Attorney General of the State of Texas is authorized to bring confiscation suits, looking to the confiscation of crude petroleum oil and products declared to be unlawful by the laws of the State of Texas. Said order was further erroneous for the reason that the denial of the State's motion amounted to a suspension of the valid statutes of the State of Texas, and [fol. 139] constituted an unwarranted interference with the enforcement of the police laws of the State of Texas by its duly constituted officers; and for the further reason that the proceedings in the United States District Court in Fort Worth were in the nature of bankruptcy proceedings, and the State, through its constituted authorities, sought

the right to file a suit at law in a State Court to confiscate the oil described in the State's motion in a Court of competent jurisdiction, as fixed by the statutes of the State of Texas in Travis County, Texas, and to declare the oil a nuisance and to place the proceeds from the sale thereof in the Treasury of the State of Texas; and the order of the United States District Court for the Northern District of Texas, prohibited the right of the State of Texas to bring confiscation proceedings in a Court of competent jurisdiction, whereby it could obtain what belongs to it by statute, and where the jurisdiction of such right is fixed by Texas statute.

Wherefore, the State of Texas and the Receivers, petitioners, feeling aggrieved because of such order entered on the — day of May, A. D. 1936, in the above entitled proceedings, do hereby petition for an appeal from said order to the United States Circuit Court of Appeals for the Fifth Circuit, and pray that their appeal may be allowed, and that a citation may be granted and directed to Trinity Refining Company, a corporation, debtor, in the Corporate Reorganization Proceedings, pending in the District Court of the United States for the Northern District of Texas, sitting at Fort Worth, and David Donoghue, Trustee appointed by the United States District Court in such proceedings, to appear before the United States Circuit Court of Appeals for the Fifth Circuit, to do and receive that which may appertain to justice to be done in the premises, and that a transcript of the record and evidence in said proceeding, duly authenticated, may be transmitted to the [fol. 140] said United States Circuit Court of Appeals for the Fifth Circuit.

William McCraw, Attorney General of Texas. J. C. Clopton, Receiver, Bullock Hyder, Receiver, Petitioners. W. J. Holt, Assistant Attorney General. William C. Davis, Assistant Attorney General. C. M. Kennedy, Assistant Attorney General. Joe Sharp, Assistant Attorney General.

UNITED STATES OF AMERICA,
Northern District of Texas:

William C. Davis, one of the duly appointed, qualified and acting Assistants Attorney General, being duly sworn, according to law, deposes and says:

That this appeal is not intended for delay, but that he verily believes that injustice has been done.

William C. Davis.

Sworn to and subscribed before me, on this 26 day of June, A. D. 1936. Mary Clark, Notary Public Dallas County. (Seal.)

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WAIVER OF ISSUANCE AND SERVICE OF CITATION AND NOTICE OF APPEAL

The undersigned attorney of record for David Donoghue, Trustee in Bankruptcy, acknowledges receipt of a copy of the foregoing petition to the United States Circuit Court of Appeals for leave to appeal, and here now expressly [fol. 141] waives the issuance of and service of citation on appeal.

W. B. Harrell, Attorney for David Donoghue, Trustee in Bankruptcy.

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IN UNITED STATES DISTRICT COURT

[Title omitted]

TRUSTEE'S PETITION FOR APPEAL—Filed June 29, 1936

To the Hon. James C. Wilson, United States District Judge:

David Donoghue, Trustee of Trinity Refining Company, Debtor herein, feeling aggrieved by the decree and order tendered and entered in the above entitled cause on the 30th day of May, 1936, dissolving the injunctions theretofore issued against the State of Texas from prosecuting its tax suit against the Debtor in the District Court of Travis County, Texas, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Fifth Circuit for the reasons set forth in the assignment of errors filed herewith. And the Appellant would show that the State of Texas has appealed from certain orders made and entered by this Court on said 30th day of May, 1936, in this proceeding, and that a bill of exception has been settled with the State of Texas as appellant

and David Donoghue, Trustee, as appellant, desires to [fol. 142] prosecute an appeal from certain orders included in said record and bill of exceptions, and that said bill of exception and transcript of the record and proceedings should be considered the same as if filed by both parties as appellants.

Wherefore, the Trustee prays that his appeal be allowed as of course and that citation be issued as provided by law and that the transcript of the record and proceedings and the bill of exception aforesaid be used and considered as the transcript of the record and proceedings and bill of exception upon this Appellant's appeal.

W. B. Harrell, Attorney for David Donoghue, Trustee, Appellant.

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IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

TRUSTEE'S PETITION FOR APPEAL—Filed June 29, 1936

To the Honorable United States Circuit Court of Appeals for the Fifth Circuit:

Comes now David Donoghue, Trustee of Trinity Refining Company, Debtor in the above entitled and numbered cause, and feeling aggrieved by the order and decree rendered and entered by the trial Court in this cause on the 30th day of May, 1936, dissolving the injunctions theretofore issued against the State of Texas from prosecuting its tax suit against the Debtor in the District Court of Travis County, [fol. 143] Texas, and now presents this, his petition for the allowance of his appeal from said decree for the reasons set forth in the assignment of errors filed herewith. And this Appellant would show that the State of Texas has appealed from certain orders made and entered by the Court on said 30th day of May, 1936, in this proceeding, and that a bill of exception has been settled with the State of Texas as appellant, and David Donoghue, Trustee, as appellant, desires to prosecute an appeal from certain orders included in said record and bill of exceptions, and that said bill of exception and transcript of the record and proceedings should be considered the same as if filed by both parties as appellants.

Wherefore, the Trustee prays that his appeal be allowed and that citation be issued as provided by law and that the transcript of the record and proceedings and the bill of exception aforesaid be used and considered as the transcript of the record and proceedings and bill upon this Appellant's appeal.

W. B. Harrell, Attorney for David Donoghue, Trustee, Appellant.

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IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING TRUSTEE'S APPEAL—Filed July 18, 1936

On this, the 29th day of June, 1936, there was presented to this Court the petition of David Donoghue, Trustee of [fol. 144] Trinity Refining Company, Debtor in the above entitled and numbered cause, addressed to this Court, praying for the allowance of his appeal as of course; also

There was made known to the Court that said Trustee had filed in the trial Court his petition addressed to the United States Circuit Court of Appeals for the Fifth Circuit, praying for the allowance of his appeal.

It is Ordered that the petition of said Trustee addressed to this Court, praying for the allowance of his appeal as of course, be and the same hereby granted and allowed.

And it further appearing to the Court that the bill of exceptions settled in the appeals by the State of Texas, appellant, from certain orders entered by this Court in this cause on the 30th day of May, 1936, and the transcript and record of the proceedings therein can be used and will serve as the bill of exceptions and transcript of the record and proceedings on this appeal;

It is Ordered that such bill of exceptions and such transcript of the record and proceedings be sent up as the bill of exceptions and transcript of the record and proceedings on this appeal and that the appeal of this Appellant be heard upon the same record, and the Clerk is authorized and directed to include in said transcript of the record such additional papers and orders as the Appellant in this appeal may desire.

James C. Wilson, United States District Judge.

[fol. 145] IN UNITED STATES DISTRICT COURT

TRUSTEE'S ASSIGNMENT OF ERRORS—Filed June 29, 1936

Comes now David Donoghue, Trustee herein, and says that the Court did on the 30th day of May, 1936, enter the following order:

"On the 30th day of March, 1936, came on for hearing the motion of the State of Texas, acting by and through William McCraw, its Attorney General, praying that all of the injunctive processes issuing out of this Court restraining the officers of the State of Texas from prosecuting certain suits in the Courts of the State of Texas seeking the recovery of taxes, fines and penalties and seeking the recovery of penalties from the Debtor herein and others, be in all things set aside and dissolved; and after hearing said motion and the evidence and arguments thereon, the Court finds that the same should be granted.

It is, therefore, ordered, adjudged and decreed that all injunctions heretofore issued in this cause against the State of Texas and its officers and administrative agencies, restraining and enjoining them from prosecuting causes No. 56252 pending in the 126th Judicial District Court of Travis County, Texas, styled The State of Texas vs. V. E. Jackson, et al, and being a suit seeking the recovery of statutory penalties for alleged violations of the conservation laws of the State of Texas, and restraining the State of Texas, its officers and administrative agencies, from prosecuting cause No. 56476 pending in the 126th Judicial District Court of Travis County, Texas, Styled The State of Texas vs. V. E. Jackson, et al, seeking the [fol 146] recovery of taxes, fines and penalties, be and the same are hereby in all things set aside and dissolved.

Dated and entered this the 30th day of May, 1936.

James C. Wilson, United States District Judge."

That Cause No. 56476 referred to in said order is a suit by which the State of Texas seeks to establish the amount of taxes and interest thereon against the Debtor and others, and seeks to establish a lien asserted by the State to be a first and prior lien on the properties of the Debtor and others; and in entering said order the Court committed error, and the Trustee assigns the following as error:

1

The Court erred in entering the order aforesaid, because by said order the trial Court authorized and permitted the State Court to fix and determine the amount of taxes legally due the State of Texas, whereas the law requires that the Federal Court shall itself fix and determine the amount of taxes legally due.

2

The Court erred in entering said order authorizing and permitting the State to prosecute in the State Court a suit against the Debtor claiming a first and prior lien upon the property of the Debtor, because Section 77-b amendatory of the Bankrupcy Act of 1898, under which the Debtor had filed its petition for reorganization, vests the Federal Court with exclusive jurisdiction of the Debtor and all of its properties wherever situated, that there may be an orderly determination in the Federal Court of all matters and things affecting the Debtor and its estate; and the order [fol. 147] of the trial Court herein complained of prejudicially interferes with and hinders such orderly determination.

3

The Court erred in entering said order, because pending the time of the final determination in the state trial and appellate Courts of the State's suit and claim for taxes, the plan of reorganization of the Debtor is prejudicially interfered with and delayed and the proceeding in reorganization is prolonged.

4

The Court erred in entering said order, because the plan of reorganization submitted by the Debtor herein proposed an early determination of the claims against the Debtor and their orderly liquidation, and said order of the Court permitting the State to determine in the State Court the amount of its tax claim, without any limitation upon it as to when its claim shall be fixed in the Federal Court with the other claimants therein, disrupts the plan of reorganization submitted by the Debtor.

5

The Court erred in entering said order and permitting the State to litigate its suit and claim for taxes in the

State Court, because pending the final determination of said suit in the state trial and appellate Courts no payments under the plan of reorganization can be made to creditors.

W. B. Harrell, Attorney for David Donoghue, Trustee, Appellant.

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[fol. 148] IN UNITED STATES DISTRICT COURT

WAIVER OF ISSUANCE AND SERVICE OF CITATION ON APPEAL—Filed July 3, 1936

The undersigned attorneys of record for the State of Texas acknowledge receipt of a copy of the petition of David Donoghue, Trustee, for appeal to the United States Circuit Court of Appeals for the Fifth Circuit, complaining of an order of the United States District Court for the Northern District of Texas at Fort Worth, Texas, permitting the State of Texas to prosecute in the State Courts Cause No. 56476 pending in the District Court of the 126th Judicial District of Texas, styled The State of Texas vs. V. E. Jackson et al, and here now expressly waive the issuance and service of citation on appeal.

William McCraw, Attorney General of Texas. William C. Davis, Assistant Attorney General.

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IN UNITED STATES DISTRICT COURT

TRUSTEE'S PRAECIPE—Filed June 30, 1936

To the Clerk of the United States District Court for the Northern District of Texas, Fort Worth Division:

In accordance with the order of the Honorable James C. Wilson, United States District Judge, you are requested by David Donoghue, Trustee in this cause, to send up as the transcript of the record in his appeal to the United [fol. 149] States Circuit Court of Appeals for the Fifth Circuit, at New Orleans, the transcript of the record heretofore requested by the State of Texas for its appeal in this cause, and in addition to such transcript so made up for the State of Texas, to include therein for this appeal the following papers, documents and orders, which together

with the papers, documents and orders included in the transcript heretofore requested by the State of Texas, shall constitute the record on this appeal:

1. Petition of the Trustee for appeal, addressed to the District Court;
2. Petition of the Trustee for appeal, addressed to Circuit Court of Appeals for the Fifth Circuit;
3. Order of the District Court on the petition for appeal;
4. The Trustee's assignment of errors;
5. Waiver of notice of appeal and citation on appeal;
6. This præcipe.

W. B. Harrell, Attorney for David Donoghue, Trustee, Appellant.

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[fol. 150] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 151] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION AND ORDER TO SEND UP ORIGINAL MOTION—Filed June 27, 1936

U. S. Circuit Court of Appeals, Filed Aug. 15, 1936. Oakley F. Dodd, Clerk. 8189

To said Honorable Court:

Comes now the State of Texas, through its Attorney General, in the above entitled and numbered cause, and respectfully moves the Court to enter its order directing the Clerk of this Court to send up on the appeal in this cause to the United States Circuit Court of Appeals, Fifth Circuit, New Orleans, the original amended motion filed by the State of Texas in this cause, through its Attorney General, seeking the confiscation of certain oil in the possession of David Donoghue, Trustee in Bankruptcy in the Corporate Reorganization Proceedings under Section 77b, and being the property of Trinity Refining Company, a corporation, Debtor, and for grounds and reasons for not including said original amended motion in the printed transcript on ap-

peal, the State represents that although the motion itself is not lengthy, the Exhibits attached thereto consist of various and sundry rules, regulations and orders of the Railroad Commission, promulgated from time to time, and that [fol. 152] the same are very lengthy, written in small type, and if attempted to be incorporated in the printed transcript of this cause on appeal, the printed transcript will be voluminous and will result in great expense to the parties litigant in having same incorporated in the printed transcript.

Wherefore, it is prayed that this Court enter its order directing the Clerk of this Court to transmit to the Clerk of the Circuit Court of Appeals, Fifth Circuit, New Orleans, the original amended motion filed by the State in this proceeding, so that the same may accompany the other papers on appeal, to the Circuit Court of Appeals.

William McCraw, Attorney General of Texas; W. J. Holt, Joe Sharp, C. M. Kennedy, William C. Davis, Assistants Attorney General, Attorneys for the State of Texas.

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ORDER OF THE COURT

The above motion having been duly presented and it appearing that it is necessary and proper that the original amended motion filed by the State of Texas in this cause, which cannot be reproduced and incorporated in the printed transcript, should be inspected by the United States Circuit Court of Appeals, Fifth Circuit, New Orleans, upon the hearing of this appeal, it is therefore Ordered that said above mentioned original amended motion be certified by the Clerk of this Court and be transmitted to the Clerk of [fol. 153] the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, to be considered along with the transcript of the record upon the hearing of this appeal.

James C. Wilson, United States District Judge.

Dated: This the 26 day of June, 1936.

I hereby certify that the foregoing is a true copy of the original thereof now in my office. Attest: July 23, 1936.

Geo. W. Parker, Clerk, by Rive J. McGrew, Deputy.

(Seal.)

[fol. 154] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of November 10, 1936

No. 8189

THE STATE OF TEXAS et al.,

versus

DAVID DONOGHUE, TRUSTEE OF TRINITY REFINING CO., Debtor,

(And Reverse Title)

On this day this cause was called, and, after argument by Joe Sharp, Esq., Assistant Attorney General of Texas, and William C. Davis, Esq., Assistant Attorney General of Texas, for appellants, and W. B. Harrell, Esq., for appellee, was submitted to the Court.

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[fol. 155] OPINION OF THE COURT AND OPINION OF HUTCHESON, CIRCUIT JUDGE, CONCURRING IN PART AND DISSENTING IN PART—Filed February 15, 1937

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8189

THE STATE OF TEXAS et al., Appellants and Appellee,

versus

DAVID DONOGHUE, Trustee of Trinity Refining Company, Debtor, Appellee and Appellants

(And Reverse Title)

Appeals from the District Court of the United States for the Northern District of Texas

(February 15, 1937)

Before Hutcheson and Holmes, Circuit Judges, and Strum, District Judge

HOLMES, Circuit Judge:

These are appeals and a cross appeal from orders of the district court made in a corporate reorganization proceeding

under Section 77B of the Bankruptcy Act (11 U. S. C. A. 207). The principal order complained of denied a motion of state court receivers for repossession of property of the debtor which had been taken from them by the trustee in bankruptcy. Other orders directly appealed from are with reference to the right of the State of Texas to proceed with [fol. 156] suits in its own courts against the debtor to recover taxes, fines, penalties, and forfeitures. One of the orders entered by the court below at the same hearing was adverse to the trustee, and from it he has prosecuted a cross appeal. It dissolved injunctions, issued on the original reorganization hearing, which restrained the prosecution of tax and penalty suits in the state courts.

The relevant facts disclose that two suits were instituted in the state courts of Texas against the debtor within four months before the filing by the latter of its petition for reorganization in the bankruptcy court. In the first, the Attorney General of Texas sought the recovery of fines, penalties, and forfeitures incurred by numerous alleged violations of the oil conservation laws of the state (Art. 6036, R. S. Texas, Acts 44 Legislature, p. 180, ch. 76, Sec. 12, Acts 1935). He also asserted a statutory lien, under Art 1373 of the Revised Statutes of Texas, upon all of the property of the debtor to enforce the payment of the amounts claimed. In accordance with the prayer of the petition, the court appointed receivers who took charge of the property in controversy for the purpose of securing the payment of the alleged fines, penalties, and interest.

In the second case, the Attorney General was suing to recover delinquent taxes alleged to have been incurred by the defendants in the production, refining, blending, and sale of motor fuel within the State of Texas; also penalties and interest alleged to have accrued by reason of such activities. A statutory lien was asserted and the appointment of receivers prayed for; but the court declined to appoint receivers for the reason, as assigned by it, that the property was then in the possession of receivers appointed by another court in the above mentioned first suit.

On December 18, 1935, the debtor, Trinity Refining Company, a corporation, and one of the defendants in each of [fol. 157] the above mentioned suits, filed its aforesaid petition in the United States District Court for Northern Texas. The district judge found that said petition was filed in good

faith, and approved the same as properly filed. At the same time, the debtor filed a plan of reorganization. The court appointed a trustee who qualified and demanded of and received from the receivers in the first suit such properties as had been taken possession of by them.

Thereafter, January 8, 1936, on motion of the Attorney General, the state court in which the suit for taxes was pending, and wherein the appointment of receivers had been denied, transferred said suit into the district court in which the penalty suit was pending, and on the same day the latter court entered in the tax suit an order appointing the same persons receivers of the debtor's property as previously had been appointed receivers in the penalty suit, reciting in the order that the bond theretofore executed by them as receivers in the first case was sufficient to stand as their bond in the second. Appellants claim that, since the latter suit seeking to foreclose a statutory lien was filed four days before the petition for reorganization was approved, the state court drew into its custody the property of the debtor to the exclusion of all other courts, notwithstanding the refusal to appoint receivers when the court was first requested so to do.

Although the defendants are exactly the same in each case, there was no effort toward consolidation prior to bankruptcy, and the two suits must be deemed separate and distinct in determining jurisdictional issues between the state court receivers and the trustee in bankruptcy.

In reorganization proceedings under Sec. 77B, the bankruptcy courts have exclusive jurisdiction of estates of debtors, except where the property is in the custody of another court as an incident to the enforcement of a valid lien not [fol. 158] obtained through judicial proceedings within four months prior to approval of the petition. Duparquet v. Evans, 297 U. S. 216; Henderson v. Mayer, 225 U. S. 631; Straton v. New, 283 U. S. 318; Bryan v. Speakman, 53 Fed. (2) 463; In re White Star Refining Co., 74 Fed. (2) 269. The jurisdiction and powers of the court, the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, are the same as if a voluntary petition in bankruptcy had been filed and a decree of adjudication entered when the petition for reorganization was approved. 77B(o). Also, in addition to the provisions of Sec. 29, U. S. C. A., Title 11, the judge may enjoin or stay the com-

mencement or continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree. 77B(c) (10), 11 U. S. C. A. 207(c)(10).

In the first suit, the lien relied upon by appellants came into existence through legal proceedings. It was the filing of the suit which created the lien. The statute provides that the State shall have a lien "from the date that suit shall be instituted," and that the instituion of such suit "shall constitute notice of such lien" (Art. 1373, supra). Having been obtained through legal proceedings within four months prior to the filing of the petition, it must be deemed null and void under Sec. 67f of the Bankruptcy Act (11 U. S. C. A. 107f); and the property affected by such lien shall be deemed wholly discharged and shall pass to the trustee as part of the estate of the bankrupt. In re Obergfoll, 239 Fed. 850; Globe Bank v. Martin, 236 U. S. 288, 59 L. Ed. 583; In re Diamond's Estate, 259 Fed. 70; In re Greyling Realty Corporation, 74 Fed. (2) 734, Certiorari denied, 294 U. S. 725; Moore v. Garaguez, 83 Fed. (2) 139.

Aside from the lien, the State contends that it should be permitted to proceed to confiscate alleged illegal oil under [fol. 159] the provisions of the Texas Confiscation Act. Unlawful oil is defined by par. d of Sec. 1 of Art. 6066(a) of the Revised Statutes of Texas as "oil which has been produced within the State of Texas from any well or wells in excess of the amount allowed by any order of the Commission, and oil which has been produced within the State in violation of any law of said state or in violation of any order of the Commission, and shall include any oil transported in violation of any such law or in violation of any such order."

The Confiscation Act declares such oil a nuisance and directs that it shall be forfeited to the State as thereinafter provided. It sets out the court procedure necessary to obtain a judgment of forfeiture and of authorization of seizure and sale of the products, as personal property is sold under execution. It provides further that the money realized from the sale of any such unlawful oil or products shall be applied, first, to the payment of the cost of suit and expenses incident to the sale of such products, after such expenses have been approved by the court, and that all funds then remaining shall be remitted forthwith to the

State Treasurer and shall be by the Treasurer placed to the credit of the General Revenue Fund of the State of Texas. The validity of this act is assailed as unconstitutional and void, but we deem it unnecessary to decide this contention. The oil was valuable property; it was not a nuisance per se; the title to it was in the debtor at the time the petition for reorganization was filed; and it passed to the trustee as part of the debtor's estate. It is now properly in the custody of the bankruptcy court.

In the second suit, which asserted a lien and sought a decree for gasoline taxes, the state court declined to appoint receivers until after the petition for reorganization was approved. When the belated appointment was made, the exclusive jurisdiction of the bankruptcy court had attached, and it was too late for the local tribunal to draw to itself [fol. 160] the res which was already in custodia legis. In Shields v. Coleman, 157 U. S. 168, 39 L. Ed. 660, it was held that, by vacating an order appointing a receiver, and discharging him, the court released its exclusive right to the custody of the property and left the way open for the jurisdiction of other courts to attach to it. We think an order declining to appoint a receiver in the first instance has the same effect, even though the reason for so doing was the existence of another state court receivership.

In the case before us, if the state court in the second suit, instead of declining to appoint a receiver prior to bankruptcy, had appointed a receiver and directed him to apply to the court in the first suit for possession of the property, when the first court should release it from custody, it would then probably have obtained priority over the bankruptcy proceeding, but, by declining to appoint a receiver, it released its claim to the custody of the property when the proceedings in the first suit were invalidated, and left the way open for the jurisdiction of the bankruptcy court to attach to it. There was no reason why the court in the second suit could not appoint a receiver who would have stood ready to take possession of the property when the first court's jurisdiction was released. Pennsylvania Company v. Pennsylvania, 294 U. S. 189. In the just cited case, after stating that, where the judgment sought is strictly in personam, suits may proceed at the same time in both state and federal courts having jurisdiction, but that, if the two suits are in rem or quasi in rem, requiring that the court

or its officer have possession or control of the property which is the subject of the suit, it is stated that "the jurisdiction of one court must of necessity yield to that of the other," and that the court first assuming jurisdiction over the property may maintain and exercise that jurisdiction to the exclusion of the other. Mr. Justice Stone then says:

[fol. 161] "Where the assertion of jurisdiction by the two courts is nearly simultaneous, it becomes important, as in the present case, to determine the precise time when the jurisdiction attaches. If the two suits do not have substantially the same purpose, and thus the jurisdiction of the two courts may not be said to be strictly concurrent, and if neither court can act effectively without acquiring possession and control of the property pendente lite, the time of acquiring actual possession may perhaps be the decisive factor. Compare Moran v. Sturges, supra, 284; Harkin v. Brundage, supra, 43. But when the two suits have substantially the same purpose and the jurisdiction of the courts is concurrent, that one whose jurisdiction and process are first invoked by the filing of the bill is treated as in constructive possession of the property, and as authorized to proceed with the cause. Harkin v. Brundage, supra, 43, 45. Jurisdiction thus attaches upon the filing of the bill of complaint in court, at least where process subsequently issues in due course. Palmer v. Texas, supra, 129; Farmers' Loan & Trust Co. v. Lake Street Elevated R. Co., supra, 60; compare Smith Purifier Co. v. McGroarty, 136 U. S. 237, 240. The confusion and uncertainty are thus avoided which might otherwise result from the attempt to resolve the troublesome question of what constitutes actual possession and to determine priority of service of process in the two suits."

By declining to appoint any receiver or to issue any other process to take charge of the property, the state court's jurisdiction in the second suit did not attach upon the filing of the bill because it was not a case "where process subsequently issued in due course." We find no error in the orders assailed by the appellants, and they are affirmed.

[fol. 162] As to the cross appeal by the trustee, it is contended that the court erred in dissolving injunctions restraining prosecutions in the state courts of said suits against the debtor and others for penalties and for gasoline taxes, wherein the State claimed liens to secure the payment

thereof upon the property of the debtor which was in the custody of the trustee. The argument is that such suits would necessarily interfere with full jurisdiction over the res by the bankruptcy court; that, having taken possession of the property of the debtor, it was the duty of the trustee to pay all taxes due by it (City of Dallas v. Menezes, 16 Fed. (2) 779; In re Florence Commercial Co., 19 Fed. (2) 468; Van Huffel v. Harkelrode, 284 U. S. 225, 52 Sup. Ct. 115, 76 L. Ed. 256, 78 A. L. R. 453); that the bankruptcy court has the power to determine the amount and validity of all such claims against the debtor; and that its jurisdiction is superior to that of the state court which was not foreclosing any lien on property within its control when the reorganization petition was approved, as well as of the state court wherein the lien was obtained by filing suit.

It may be that the orderly administration of the reorganization proceedings would be subserved by the bankruptcy court exercising its powers in adjudicating the amount due for taxes, the legality or illegality of the claims for fines and penalties, the matter of forfeitures, and the validity or invalidity of the alleged liens upon property in the possession of the trustee in bankruptcy, but that was a matter for the determination of the district judge in his discretion. Having first issued the temporary injunction, he later saw fit to dissolve it, and we cannot say that there was an abuse of discretion in so doing. Smith v. Vulcan Iron Works, 165 U. S. 518; Meccano, Ltd. v. Wanamaker, 253 U. S. 136, Cf. United Fuel Gas Co. v. Public Service Comm., 278 U. S. 322; Alabama v. United States, 279 U. S. [fol. 163] 229; Ohio Oil Co. v. Conway, 279 U. S. 813. Also cf. Rule 12, 286 U. S. 602, 603.

Both on direct and cross appeal, the case is Affirmed.

HUTCHESON, Circuit Judge, concurring in part and dissenting in part:

Except as it affirms the denial of the State's petition to be allowed to proceed in condemnation against the alleged "unlawful oil," I concur in the general result of the decision. I agree, too, with the general statement on pages 3 and 4 of the opinion, as to the jurisdiction of the bankruptcy court in reorganization proceedings, and in all that is said with regard to the first suit. I do not agree with, but respectfully dissent from, what is said, on pages 5, 6, and 7

of the opinion, as to the effect on the second suit of the filing of the debtor's petition for reorganization. The authorities the opinion cites lead, I think, to a conclusion exactly the opposite of that the opinion announces, that because the court declined to appoint receivers it did not acquire jurisdiction over the property. They make it clear, I think, that in case of suits to foreclose a lien, valid as well after as before the institution of bankruptcy proceedings, "jurisdiction attaches upon the filing of the bill of complaint in court, at least where process subsequently issues on a bill in due course." Penn. Co. v. Pennsylvania, 294 U. S. 189; Harkin v. Brundage, 276 U. S. 43-5; Metcalf v. Barker, 187 U. S. 165; Palmer v. Texas Co., 212 Tex. 118; Farmers Loan [fol. 164] & Trust Co. v. Lake Street, 177 U. S. 51. In this case process issued in due course.[1] The majority opinion is, therefore, in error in stating that this is not a case where process subsequently issued in due course. The error of the majority arises, I think, from the mistaken view that the appointment of a receiver, or other process of seizure, is necessary to give jurisdiction. White Star Refining Co., 74 Fed. (2) 269, cited by the majority, announces, and the announcement is supported by uniform authority, "that the foreclosure of a lien not invalidated by bankruptcy on specific property, *undertaken in a state court with or without receivership is unaffected by the subsequent filing of a bankruptcy petition against the owner of the property, and that the bankruptcy court as to that property has not paramount jurisdiction but only concurrent jurisdiction and must observe due comity is now well settled.*" (Italics mine).

Notwithstanding my difference with the majority in these respects, I believe the decision of affirmance, except as to the condemnation proceeding, was right, for the property not having been taken into the actual physical possession of the court through its receivers (Cf. Moran v. Sturges, 154 U. S. 256), the jurisdiction of the state and federal courts as to the determination of liens upon or claims against the property was concurrent up to the point of its seizure for the purpose of satisfaction of those claims. Fred Ley &

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NOTE. 1. Finding of fact of the trial court VIII. "Citation and notice were duly issued in the cause, and service thereon was had."

Company v. Wheat, 64 Fed. (2) 257. If then, the jurisdiction and power of the court in reorganization proceedings were no greater than it is in ordinary bankruptcies, its action in taking the property over would have been error. But, under Section 77B(c)(10) (11 U. S. C. A. 207(c)(10) the Reorganization Court has power to enjoin or stay lien suits until after final decree, and whether the state court had actual possession of the property, or not, could have stayed all proceedings in the suit. Its action therefore in taking [fol. 165] charge of the property, and holding it to preserve the status while permitting the state suits to go on, was, I think, no violation of comity but the exercise of a sound administrative discretion in recognition of it. In this way the court prevented the dissipation of the property during pendency of the reorganization proceedings, while permitting the state to proceed in its own courts in the enforcement of its own laws against a company which on the pleadings, the only record we have, appears to have been an egregiously willful tax evader and violator of those laws. Bankruptcy does not of itself destroy the jurisdiction of state courts. It is competent for the court of bankruptcy to permit administration to go on in them. Ex Parte Baldwin, 291 U. S. 610; Connell v. Walker, 291 U. S. 1. It is usual and proper for federal courts to defer to prior state court proceedings to the extent of relinquishing jurisdiction to them, especially where the suits, like those dealt with in this proceeding, are brought by a state in respect of its fiscal affairs. Pennsylvania v. Williams, 294 U. S. 176; Penn. Co. v. Pennsylvania, 294 U. S. 189. The suits brought here are not only in the interest of preventing tax evasion, but, if successful, would establish the complete insolvency and inability of the debtor to reorganize. Their prosecution should not be drawn into the bankruptcy court, but should be left in the state courts. Re Sentinel Oil Co., 12 Fed. Supp. 294; Re Missouri Gas & Electric Co., 11 Fed. Supp. 434. To the condemnation proceeding which the state sought permission to bring, these observations apply with peculiar force. If the oil is "unlawful oil," and subject to condemnation, certainly by taking bankruptcy or by proceeding in reorganization, a willful violator may not change it into lawful oil. If the state was entitled to condemn it before the petition was filed, it was equally so entitled after it was filed. The proceeding to condemn is a special one; it must be followed exactly as provided

for by the statute. U. S. v. Smelser, — F. (2) —; Mingus v. [fol. 166] Wadley, 285 S. W. 1084. The bankruptcy court sitting in reorganization is not competent to inquire into or adjudge the condemnation. The result of the court's order in refusing permission to proceed, if effective to prevent the State's first proceeding, would be that the reorganization would proceed on the assumption that the oil was the debtor's property only to have that assumption disappear if in a condemnation suit filed after reorganization judgment went for the state. For it is perfectly plain that a proceeding, in which the question of whether the property is to be forfeited may not be tried and decided, cannot affect that question. Though, therefore, I am of the opinion that the bankruptcy court was without power to prevent the State's first proceeding with its suit to condemn, and that the State may proceed without permission, for the suit is not one in rem, and does not require the court to have possession of the property until the judgment of condemnation is entered, I think the State did the seemly thing in applying for permission, and that permission should have been granted as matter of course. If the oil is condemned while the property is still in the custody of the reorganization court, certainly that court can be depended upon in the exercise of the comity due between courts to surrender it on the State's writ for sale as the statute requires. I therefore dissent from the judgment of affirmance as to the condemnation proceeding.

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[fol. 167] JUDGMENT

Extract from the Minutes of February 15, 1937

No. 8189

THE STATE OF TEXAS et al.,

versus

DAVID DONOGHUE, Trustee of Trinity Refining Co., Debtor

(And Reverse Title)

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the orders of the said District Court appealed from in this cause be, and the same are hereby, affirmed on both the direct and cross-appeal;

It is further ordered, adjudged and decreed that the appellants, The State of Texas, and others, and the surety on the appeal bond herein, The Ætna Casualty and Surety Company, be condemned in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Hutcheson, Circuit Judge, concurring in part and dissenting in part."

[fol. 175] ORDER DENYING REHEARING

Extract from the Minutes of March 5th, 1937

No. 8189

THE STATE OF TEXAS et al.,

versus

DAVID DONOGHUE, Trustee of Trinity Refining Co., Debtor

(And Reverse Title)

As neither of the judges who concurred in the judgment of the court in the above numbered and entitled cause is of opinion that the petition for rehearing should be granted, it is ordered that the said petition be, and the same hereby is Denied.

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[fol. 176] MOTION AND ORDER STAYING MANDATE—Filed March 19, 1937

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

*No. 8189*

THE STATE OF TEXAS et al., Appellants and Appellee,

vs.

DAVID DONOGHUE, Trustee of Trinity Refining Company, Debtor, Appellee and Appellants

To the Honorable Court Aforesaid:

Come now the appellants and appellee in the above entitled and numbered cause, and would show to the Court that they will immediately, and as soon as the Clerk of this Court can prepare a transcript of the proceedings in this cause, apply to the Supreme Court of the United States for a writ of certiorari to review the judgment rendered herein by this Honorable Court wherein it affirmed the judgment of the District Court of the United States for the Northern District of Texas on the direct appeal and upon

the cross appeal. Appellants and appellee would further show to the Court, that they believe that, if the mandate of this Court affirming the direct appeal by appellants and appellee is not stayed, the appellee and appellants, David [fol. 177] Donoghue, Trustee of Trinity Refining Company, Debtor, will immediately attempt to dispose of the properties and assets of the Trinity Refining Company, Debtor, with a view to satisfying the claims of various creditors now on file with the Trustee in Bankruptcy under Section 77-B, either in the reorganization proceedings as it now exists or under liquidation as provided for in Section 77-B of the Bankruptcy Act, in which event the controversy existing at this time, and which appellants and appellee will attempt to have passed upon by the Supreme Court of the United States pursuant to their petition for writ of certiorari, will become moot pending such consideration by the Supreme Court of the United States.

Wherefore, because of the premises, appellants and appellee pray that this Honorable Court stay its mandate for such time as will enable the appellants and appellee to apply to the Supreme Court of the United States for a writ of Certiorari to review the judgment of this Court; and, if appellants and appellee file such application with the Clerk of said Court within such time, then that said mandate be stayed until this cause be determined by said Court.

Respectfully submitted, William McGraw, Attorney General of Texas; William C. Davis, Assistant Attorney General, Attorneys for Appellants and Appellee.

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[fol. 178] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 8189

THE STATE OF TEXAS et al., Appellants and Appellee,

versus

DAVID DONOGHUE, Trustee of Trinity Refining Co., Debtor, Appellee and Appellants

(And Reverse Title)

On Consideration of the Application of the Appellants and Appellee in the above numbered and entitled cause for

a stay of the mandate of this court therein, to enable them to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 19th day of March, 1937.

(Signed) E. R. Holmes, United States Circuit Judge.

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[fol. 179] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 154 to 178 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 8189, wherein The State of Texas, et al., are appellants and appellee, and David Donoghue, Trustee of Trinity Refining Co., debtor, is appellee and appellants, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 153 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 19th day of March A. D. 1937.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

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[fol. 180] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 3, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, limited to the questions raised upon the application of the State for permission to take proceedings for the confiscation of the alleged illegal oil.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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Endorsed on cover: Enter William McCraw. File No. 41,430. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 28. State of Texas and J. C. Clopton and Bullock Hyder, Receivers, etc., petitioners, vs. David Donoghue, Trustee of Trinity Refining Company, Debtor. Petition for a writ of certiorari and exhibit thereto. Filed April 13, 1937. Term No. 28, O. T., 1937.